

**Utah
Underground Storage Tank (UST)
Recertification Guide**

**Certification Requirements and
UST Rules**



November 2008

24 Hour Emergency Phone Number for Incident Spills
(801)536-4123

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Underground Storage Tanks - Recertification Exams

Applicants for first time Certification for Groundwater/Soil Sampler, UST Remover, and UST Installer must attend a Division of Environmental Response and Remediation (DERR) approved course. *Those whose certification has been expired for more than two years must take a DERR approved course.*

For more information contact **Michelle Horning (801)536-4128**. Initial and recertification exams for UST Tester can be taken at one of the scheduled dates.

UST rules require individuals applying for certification renewal to complete a course "equivalent" to previously DERR approved training courses. Course requirements and the responsibility to provide appropriate training have not been deleted, but rather, passed to the applicant. Applicant for renewal must take the recertification exam administered at the DERR on one of the scheduled dates. Individuals may obtain a study guide in preparation for taking the examination. Please pass study guides to other people in your company planning to recertify in the UST program.

All applicants for certificate renewal may take an UST exam within 6 months prior to the expiration date of the certificate. **You must score 80% to pass. If you fail the examination, you must wait a month before you can retake the test. If you fail a second time you may be required to attend an approved training course, then take the exam in conjunction with the course.** Please be aware that courses are taught by independent organizations and may only be taught 2 - 3 times per year. The DERR is not responsible if your certificate lapses and you are unable to perform UST activities for a period of time after failing an exam.

After completing the exam, if you have any questions or comments concerning the contents of the exam, please submit these questions in writing.

No pre-registration is required. An application must be completed and submitted with the required fee of \$225.00 to the DERR to become certified once you have passed the exam. DERR will not accept an application without the required fee.

Exams are administered at the DERR, 168 N. 1950 W., first floor, Salt Lake City, Utah, at 9 am the first Tuesday of every month.

Those persons desiring accommodation for a disability under the Americans With Disabilities Act (ADA) should notify Charlene Lamph, ADA Coordinator, in writing at P.O. Box 144810, SLC, UT 84114 no later than 10 working days before the scheduled testing date. Notification should include medical and/or psychological documentation including a statement of diagnosis and associated functional limitations.

If you have questions or comments about the UST certification program, contact David Wilson at (801)536-4138.

Definitions/Glossary

Accumulator: a device that stores product, which can be used to prevent false line pressure alarms in pressurized systems. Pressure losses are a result of the contraction of product as it cools, especially in colder weather. The accumulator slowly releases product to the line to maintain a constant minimum pressure and is commonly used with Veeder-Root Constant Pressure Turbines® (CPT), and Simplicity® and Red Jacket 4000 PPM monitoring systems.

Annular Space: the space created between the primary and secondary container of a double walled underground storage tank system.

API: American Petroleum Institute. An organization of business and industry representatives responsible for developing procedures for the installation, operation and testing of UST systems.

Automatic Tank Gauging (ATG): is a system of sensors, probes and pressure transducers that are wired to a control panel. The system can monitor lines, tanks, submersible turbine pump (STP) sumps, dispenser pans and tank and interstitial areas for leaks at a rate of .1, .2 and 3 gph depending on the equipment present. In the most basic form, the ATG only monitors the product level and can be used for overfill protection when connected to an alarm (horn/light). The panel can be programmed to run tests of the system daily, weekly or monthly. Veeder-Root, Red Jacket, EBW, Simmons Wilco, Emco Wheaton and Incon make some of the more common units. The features and functions vary greatly. Contact the NJDEP for specific information, maintenance requirements and third party certification.

Automatic Tank Gauge Probe (ATG Probe): used to monitor product level in an underground storage tank (UST) for inventory records and/or for monthly leak detection monitoring.

Boots: (Also known as reducer boots or test boots) are made of nitrile or similar materials and are fitted to the end of double wall piping, especially in product tight sumps. The boots are tightened to isolate the interstitial portion of double wall lines for pressure testing to verify integrity. During normal operation the boots must be loose or have an open nipple to allow any fluid that leaks into the interstitial space to be detected by liquid sump sensors or other means of monitoring.

Bravo Box (B-2000): A product tight dispenser pan installed inside and under a dispenser, that prevents leaking product from the internal dispenser components from entering the environment. The Bravo box (made by Sergio Bravo) has a float for each shear valve (only on pressurized systems) and if more than 5 fluid ounces of product is spilled, the float will shut off the shear valve (also known as impact valve) which stops the flow of product. The floats are black and have chains attached to each shear valve. There are other types of dispenser pans, (e.g.: Environ & Total Containment), but the B-2000 can actively stop a leak from continuing.

Capacitor: an electrical storage device located on the top of the Submersible Turbine Pump (STP) that helps start the turbine motor. Some types of Wireless Line Leak Detectors (WLLD) prevent the capacitor from charging when a loss of line pressure is detected. This prevents the STP from starting.

Cathodic Protection: a technique to prevent corrosion of a metal surface.

Cathodic Test Port: typically a 3-inch diameter metal or plastic cover mounted flush with the tankfield paving. Upon removal of the cover you will find wires that are directly connected to tanks and/or lines. These wires allow direct electrical connection to the tanks and or lines to permit a cathodic test to be performed. They are most commonly associated with the installation of Sti-P₃ tanks because all tank risers (including the STP where fitted) are insulated with dielectric bushings which prevent electrical connections with the tanks proper.

Close or Closure: the permanent elimination from service of any underground storage tank system by removal or abandonment in place.

Coating: this can be asphalt, paint, fiberglass reinforced plastic (FRP) or epoxy that is applied as a coating to the outside surface of a tank during manufacture. It cannot be added later. In some cases, this coating (FRP or epoxy) can serve as a method of corrosion protection for tanks constructed of steel.

Coaxial: commonly used to describe a double wall drop tube that is used for the dual purpose to fill the tank with product and to recover vapors (Stage I). The inner pipe is used to fill the tank; while the larger outer pipe returns the fuel vapors to the tanker. Check the coaxials carefully, they may contain overflow valves (commonly manufactured by OPW/EBW). Coaxial also refers to a double wall fiberglass product line in which the interstitial area is filled with fine-grained sand.

Contaminant: any discharged hazardous substance.

Continuous Monitoring: means a monitoring system that incorporates automatic equipment that can detect leaks and/or discharges without interruption.

Corrosion: means the deterioration of a metal (typically ferrous) by direct or electrochemical reaction with its environment.

Corrosion Protection (for steel tanks and lines): There are two types of corrosion systems for steel lines and tanks. The passive or sacrificial anode system relies on anodes attached to the tank ends or spike anodes attached to the lines. These anodes (commonly zinc, magnesium, or aluminum) are more electro-chemically active than steel. By corroding preferentially over bare steel, anodes protect the tanks/lines from corrosion. The impressed system uses a rectifier to convert 120 VAC into direct current (DC) which enters the ground through wires and cathodes. This impressed (induced) current prevents corrosion of the tanks and/or lines.

CPT: this stands for constant pressure turbine which is a submersible turbine pump (STP) made by Marley (Red Jacket). This pump uses a product line pressure transducer to monitor line pressure and a frequency control box that can control the speed of the pump. If several cars are being fueled at one time, a drop in line pressure tells the turbine to speed up, thereby maintaining the filling rate. When the pump is off, the pressure transducer can perform line leak detection by sensing line pressure decay. The monitoring system is typically a Prolink/PPM unit (although many PPM units are still in service, Marley has discontinued their manufacture). See the photo in the manual of a CPT or visit www.Marley-pump.com

Dielectric: a material that does not readily conduct electricity such as PVC, fiberglass, neoprene and rubber. Dielectric bushings are used on steel tanks to prevent current from the turbine or lines from reaching the UST.

Discharge: means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a hazardous substance into the waters or onto the lands of the State or into the waters outside the jurisdiction of the State, when damage may result to the lands, waters, or natural resources within the jurisdiction of the State.

Discharge Detection System: means a method of detecting a discharge of hazardous substances from an underground storage tank system.

Dispenser pan: A product-tight chamber beneath the fuel dispenser designed to contain any product that may leak from any dispenser valves or during a dispenser filter change. These devices are not required, but certainly good management practice.

Double-Walled Tank: means an underground storage tank in which a rigid secondary container is attached to the primary container. The two containers create an annular space which is commonly monitored for leak detection (tanks).

Drop Tank: typically a 4-inch diameter, 4-foot long single wall fiberglass reinforced plastic tank that is present if the Stage II vapor recovery piping cannot be pitched (typically $\frac{1}{4}$ inch per linear foot) to a regular grade tank. The drop tank stores the condensed vapors (liquid form) and is emptied automatically by a siphon line to the functional element on the submersible turbine pump (STP) or is pumped out manually. The drop tank is outside the realm of leak detection, but if tank field or monitoring well contamination levels increase, the Stage II system, including the drop tank, may be the cause. Pressure decay tests and wet and dry block tests are used to evaluate the Stage II piping system for tightness.

Drop Tube: Pipe directly over the UST extending to grade which is used to fill the UST with product. It may be a single wall or coaxial tube. The drop tube must extend to within 1 foot of the bottom of the UST to help stabilize fuel during delivery for accurate product level measurements as part of certain types of leak detection monitoring. The use of drop tubes also minimize the generation of static electricity resulting from fuel turbulence caused when filling a tank.

Dry Break: This is a spring loaded check valve used for Stage I vapor recovery. This vapor check valve is connected to the tanker during product delivery and the displaced vapors from the tank are routed back to the tanker. In many cases, the 90% flow restrictor (ball float) for overfill protection is located under the dry break, however in this application, the dry break MUST be located directly above the center line of the tank.

Empty: means all hazardous substances have been removed from an UST that can be removed by direct pumping or drainage and no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the system remains, whichever is the smaller amount.

Facility: means one or more underground storage tank systems owned by one person on a contiguous piece of property.

Facility Certification: means the periodic renewal of the registration of a facility with the Department pursuant to N.J.A.C. 7:14B (Regulations Implementing the Underground Storage of Hazardous Substances Act).

Fiberglass Reducer: Serves the same function as a rubber test boot (see boot definition) to allow for the tightness testing of double walled lines.

Fillport: The end of the drop tube at ground surface where product is introduced to a UST. It will be covered with a color-coded outer steel plate and an inner cap.

Financial Responsibility Assurance: means the assurance, through one or more allowable mechanisms, pursuant to N.J.A.C. 7:14B-13.8, of the availability of funds necessary for the cleanup or mitigation of a discharge of hazardous substances.

Flex line: A product line that is made of a continuous flexible material. Fittings such as elbows and tees are not required. These lines can be single and double wall. They do not require corrosion protection. These lines are known as (among others) Environ's Geoflex[®], Total Containment[®] and Poly Tech[®].

Free Product: means a non-aqueous phase liquid present in concentrations greater than a contaminant's residual saturation point, with a positive pressure so that the material can flow.

FRP: Fiberglass Reinforced Plastic. A non-corroding material used in the construction of tanks, lines and sumps.

Functional Element: A check valve device that is found on submersible turbine pumps (STPs) used in pressurized systems. The functional element maintains line pressure when the turbine motor is shut off. The functional element can also be used to establish a siphon break for manifolded tanks or a siphon line for Stage II drop tanks.

Geoflex®: A double wall plastic product line (manufactured by Environ) that is installed as one piece. Because it is flexible, connections and fittings are not required. Typically, Geoflex® lines are bright green in color.

Hazardous substances: means: motor fuel; petroleum products which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); all substances which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute) listed in Appendix A of N.J.A.C. 7:1E; and Waste oil.

Healy: one manufacturer of Stage II vapor recovery pumps. These units can be powered by pressurized gasoline or electricity. They generate a vacuum which in turn draws the vapors to the regular grade tank. The Mini-Jet, Vacu-Jet and Multi-Jet pumps operate on pressurized gasoline from an STP and are located at the tank field. The electric units, also known as vac-motors, are typically located in the dispensers.

Healy Mini-Jet (9000)® and Vacu-Jet (200 & 400)®: product-driven units that produce up to 80 inches (water) of vacuum. They are usually found at the tanks (tank field area), and the vacuum pulls the Stage II vapors back to the lowest grade tank present (usually Regular grade). Most commonly found at Sunoco and Hess/Merit sites. These items are used in the Healy type of Stage II systems and are components used for Stage II vapor recovery compliance.

Heating Oil: any grade of petroleum product including, but not limited to, No. 1, 2, 4 (light and heavy), 5 (light and heavy) and 6 fuel oils, diesel and kerosene of any grade or type used to heat residential, industrial or commercial premises.

Hydrostatic Test: an integrity test of the spill buckets and/or the submersible turbine pump (STP) sumps using water. The containment vessels are filled above their highest wall penetration with water, the level is recorded over time, and a drop in water level indicates a leak. Water used for this test must be managed properly as it may become contaminated with product.

Impressed system: a method of cathodic protection for tanks and/or product lines. The system uses a rectifier which converts alternating current (AC) to direct current (DC) which is then introduced into the ground around the tanks and lines by a series of wires and cathodes. The current prevents the steel tanks and lines from corroding. The panel (rectifier) must be checked for operation every 60 days and the cathodes must be tested every three years. See the Cathodic Testing section.

Interstitial: the space between two walls of a double walled UST or piping system.

Inventory controls: Techniques used to identify a loss of product that are based on volumetric measurements in the underground storage tank and reconciliation of these measurements with hazardous substance delivery and withdrawal records.

Leak: the release of a hazardous substance from an underground storage tank system into a space created by a method of secondary containment wherein hazardous substances can be detected by visual inspection or a monitoring system before it enters the environment.

Leak Detection System: a method of detecting a leak in the space created by a method of secondary containment.

Lining: a non-corrodible material such as fiberglass reinforced plastic or an epoxy that is applied to the inside of a tank during manufacture or added at a later date as a corrosion upgrade. See the section on substantial modifications and upgrades. This corrosion protection material must be chemically resistant to the hazardous substance stored and bonded firmly to the interior surface of the tank, pipe, line, fixture or other equipment.

Liquid: any material which has a fluidity greater than that of 300 penetration asphalt when tested in accordance with the ASTM D-5-78 Test for Penetration for Bituminous Materials. If not specified, liquid shall mean both combustible and noncombustible liquids.

Liquid Sensor: a monitoring system that detects the liquid phase of a hazardous substance.

Liquid Sensors: Electro-mechanical devices that are primarily used to detect liquids present in sumps or tank/line interstitial areas. The sensors fall into two general categories: discriminating, which only detect product, and non-discriminating, which can only detect a liquid. They can use floats with reed switches or electronic probes to detect liquids.

Line Leak Detector, or LLD: is a mechanical device that is fitted to the submersible turbine pump (STP) and either stops or restricts product flow when a leak rate of 3 gph or greater is detected. There are several common models made by F.E. Petro[®], Marley Pump[®] and Vaporless[®] Manufacturing. These units require annual testing (manufacturer's requirement).

Manifolded: the use of a physical connection (siphon bar) between two or more tanks of the same contents, typically, regular grade gasoline or diesel fuel.

Manway: a large opening in an UST used to access the UST for internal inspections. Can be factory or field installed after an UST is lined.

Marley: the Marley Pump Company which manufactures petroleum and water pumps, dispensing and monitoring equipment. The brand name is Red Jacket[®].

Monitor Well: a well used to observe the elevation of the water table or potentiometric surface, or to determine water quality in an aquifer.

Monitoring System: either a discharge detection system or leak detection system capable of detecting leaks or discharges, or both, other than an inventory control system, used in conjunction with an underground storage tank, or a facility conforming to criteria established in N.J.A.C. 7:14B-6.

Nonoperational Storage Tank: any underground storage tank in which hazardous substances are not contained or from which hazardous substances are not dispensed.

Operational Storage Tank: any underground storage tank in which hazardous substances are contained or from which hazardous substances are dispensed.

Operator: any person who leases, operates, controls, supervises or has responsibility for the daily operation of a facility, or any person who has the authority to operate, control or supervise the daily operation of a facility.

Out of Service Storage Tank: means any underground storage tank system in which hazardous substances are contained or have been contained, but from which hazardous substances are not or have not been introduced or dispensed pending a decision to close the system or to begin reuse of the system.

Overfill Prevention: means the use of a mechanical or electrical device designed to restrict or stop the transfer of hazardous substances from a delivery vehicle to a tank or alert the operator that the tank is nearly full.

Owner: means any person who owns a facility, or any person who has a legal or equitable title to a site containing a facility and has exercised control of the facility. In the case of a nonoperational storage tank, the person who owned the facility containing the nonoperational storage tank immediately prior to discontinuation of its use.

Piping or Pipe: means any hollow cylinder or tubular conveyance which contains a hazardous substance or routinely contains a hazardous substance, is in contact with the ground and is constructed of non-earthen materials, including any fill pipe, valves, elbows, joints, flanges and flexible connections. Piping does not include vent lines, vapor recovery lines or fittings located on top of the tank.

Pressure Degradation Test: An integrity test of tanks, lines, interstitial areas and Stage II lines using pressurized helium, nitrogen or product. A drop in the pressure indicates a leak.

Pressure Transducer: An electrical device that when used in conjunction with an automatic tank gauge (ATG) system or as part of a wireless line leak detector (WLLD), can detect a decrease in product line pressure. This decrease in pressure can result in an alarm being triggered or the product pump being turned off. Most of these units are capable of detecting leaks of .1, .2 and 3 gph. **Also see SwiftCheck®.**

Primary container: means the first level of containment which comes into immediate contact on its inner surface with the hazardous substance being contained (for example, a single-walled tank or the inner wall of a double walled UST).

Probes: Electromechanical devices that are used in conjunction with monitoring systems (ATGs) to measure product levels in tanks. The common use is the reference to in-tank probes which typically measure the amount of product, ullage (empty portion of UST), water and temperature present in the tank.

Product Tight: means impervious to the hazardous substance contained or to be contained so as to prevent a release.

Quantum®: A specific model name of submersible turbine pump (STP) manufactured by Marley Pump. See also "Red Jacket®".

Rectifier: see "Impressed system".

Red Jacket®: this is a registered trade name for a line of petroleum dispensing, pumping and monitoring equipment manufactured by the Marley Pump Company. Red Jacket® has become synonymous with all mechanical line leak detectors (LLDs). The LLD is designed to monitor line pressure (pressurized systems only). If a leak exceeds 3 gph, the Red Jacket® slows the flow rate thereby signaling a line pressure loss.

Reference Cell: Also known as a ½ cell or a copper/copper sulfate cell. This item is used with a ranging voltmeter to perform a cathodic test of passive and impressed systems. See Cathodic Test section.

Registration Certificate: means a control document issued by the department to implement the registration requirements of N.J.A.C. 7:14B.

Release: means a leak or discharge.

Release detection monitoring (RDM): all product-bearing lines and tanks must be tested monthly at a leak rate of .2 gph. Owners/operators must be able to document compliance with this requirement. RDM which has been a requirement since 12/22/1993. Product lines for a European suction system do not require testing. See suction system.

Release detection observation well: means an access point constructed of screen and casing, which may be used in conjunction with a monitoring system, to detect a release of hazardous substance stored in the underground storage tank system either in the vapor or liquid phase for the operational life of the underground storage tank system.

Remedial Action: means remedial action as defined in the Technical Requirements for Site Remediation, N.J.A.C. 7:26E.

Remedial Investigation: means remedial investigation as defined in N.J.A.C. 7:26E-1.8.

Riser: Any vertical pipe that is connected to a tank. Drop tubes and 90% flow restrictors are found in risers. Small diameter risers (2-inch) are commonly used to gain access to the interstitial area of double wall tanks.

Secondary Containment: means an additional layer of impervious material creating a space wherein a leak of hazardous substances from an underground storage tank system may be detected before it enters the environment.

Shear Valve: Also known as an impact valve. This is a valve unit located in the base of all pressurized dispensers. If the dispenser is knocked over, the valve shuts off fuel flow from the submersible turbine pump (STP). The shear valve also has a fusible link attached to the side of the valve body. If a fire occurs, this link melts and the spring-loaded valve shuts, thus stopping the fuel flow.

Sherlock®: A vacuum test developed by Crompco for testing the integrity of spill buckets.

Simplicity®: A type of automatic tank gauging monitoring system that is manufactured by Veeder-Root. It is monitored by a third party (off-site) such as PDS, FMS or Polecat. Exxon commonly uses Simplicity® for tank RDM and uses a pressure transducer wired to the panel for line leak detection.

Siphon Break: a mechanical or electrical (solenoid valve) device that prevents manifolded tanks from siphoning into each other which can be a problem when using in-tank probes for leak detection. The most common mechanical siphon break, can be recognized by a 3/8 inch copper pipe connecting the tanks together and vented at the functional element on the submersible turbine pump (STP). Look for the pipe in the STP sumps.

Site: the contiguous piece of property at which a facility is located.

Site Investigation: site investigation as defined in N.J.A.C. 7:26E-1.8.

Spill Bucket: a product-tight chamber that surrounds the fill port riser. It is designed to capture any product that may spill when disconnecting the delivery truck hose from the UST fill port riser.

Spill Prevention: means the use of a spill bucket on the fill pipe riser to prevent a discharge during the transfer of hazardous substances from a delivery vehicle to a tank.

Stage I Vapor Recovery: The vapor recovery system that is used to recover vapors generated during a delivery to an UST. They can consist of a coaxial drop tube, which consists of an inner (product delivery) and an outer (vapor return) pipe or the second type which uses a vapor check valve (dry break) and associated piping to return tank vapors to the delivery truck. The vapor check valve which is found under an orange cover at the tank field, is more common and can be manifolded so one valve handles all the tanks. Vapor recovery systems are required for the purpose of air pollution control and are not requirements of N.J.A.C. 7:14B.

Stage II Vapor Recovery: A means of recovering gasoline vapors generated when filling a vehicle's fuel tank. The Balance system, which is the most common, relies on the bellows and coaxial hoses of the dispenser to route the vapors to a buried system of piping that is pitched towards the lowest grade fuel tank at the site. If the 1/8-inch per foot pitch cannot be maintained, a drop tank has to be installed. The Healy system relies on a Mini-Jet or a Vacu-Jet to draw the vapors to the lowest grade fuel tank. A vacmotor (such as a VP-1000) or assisted system uses an electric blower at the dispenser to pull the vapors to the recovery lines at the dispenser base. The Stage II system is outside the realm of leak detection, but can be a source of leaks and contamination. You can request a pressure degradation test and a block test (wet & dry) to be performed per the California Air Resources Board (CARB) method.

Sti-P₃: Steel Tank Institute, 3 levels of corrosion protection. This is a type of steel tank that uses a coating as one type of corrosion protection. In addition, all penetrations (risers and submersible turbine pumps (STPs) through the tank are electrically isolated by plastic dielectric bushings. The third means of corrosion protection is the fitting of anodes at the tank ends (10,000 gallons or less). These tanks can be either single or double wall.

Statistical Inventory Reconciliation (SIR): a third party certified method of monthly line and tank release detection. Stick readings, delivery and sales totals are processed using a computer program which shows PASS, FAIL, or INCONCLUSIVE results for each tank and its product piping. This type of monitoring is common because only a gauge stick is required. Some owners/operators collect the tank readings with an ATG.

Submersible Turbine Pump (STP) Sump: The below grade housing for a submersible turbine pump (STP). Some of these sumps are product tight, but many sumps are made of concrete blocks with soil at the bottom.

Submersible Turbine Pump (STP): These pumps, which are located in the tank, deliver product by pressurizing the product lines which run from the tank to the dispenser. Common units are made by Marley (painted red) and F.E. Petro (painted blue).

Substantial Modification: any construction at, or restoration, refurbishment or renovation of, an existing facility which increases or decreases the in-place storage capacity of the facility or alters the physical configuration or impairs or affects the physical integrity of the facility or its monitoring systems.

Suction Piping: This is the product delivery method that uses a suction pump located in the dispenser. There are two types: 1) The American (angle check) has a check valve at the tank. This check valve usually is paved over and cannot be seen. The American system requires line testing every three years. 2) The European (safe suction or union check) has a check valve in the union immediately below the suction pump located in the dispenser. This type of system does not require line testing. The owner/operator must document which system is present.

SwiftCheck ®: A 4-inch black steel check valve (riser), manufactured by Veeder-Root, and is attached to a pressure transducer, the combination of which tests the product lines to 0.1, 0.2 and 3 gallons per hour (gph). Located on submersible turbine pumps (STPs) where the LLD is normally fitted, the SwiftCheck® allows the pressure transducer to detect product line leaks at the rates of .1, .2 and 3 gph. A SwiftCheck® is not required if the STP is a Quantum® or CPT®, both manufactured by Marley Pump (Red Jacket). See the photo in the manual of a Quantum® and CPT® submersible turbine pump. A SwiftCheck® can also be used with wireless line leak detectors (WLLDs) to test product lines to .1, .2 and 3 gph. If the SwiftCheck® is not present, the WLLD can only detect a leak of 3 gph or greater. Typically, the piston and spring in the STP functional element must be removed for correct operation. **Also see Pressure Transducer**

Tank: a stationary device designed to contain an accumulation of hazardous substances which is constructed of non-earthen materials (for example, concrete, steel, plastic) that provide structural support.

Tank Capacity: the manufacturer's nominal tank size, when referring to a single tank. When referring to multiple tanks storing hazardous substances used for the same purpose at the same site within one of the following two categories: motor fuel and heating oil, then the aggregate of the nominal tank sizes will be used to determine capacity.

Tank Field Well/Vapor Well: a monitoring well usually installed within the UST excavation backfill material used to monitor for vapors or for product if the water table is less than 20 feet below ground surface.

Tank Probe: part of an automatic tank gauging system. An electronic monitoring device capable of measuring product levels for inventory records and/or for leak detection purposes.

Turbine Pump: an electrically driven vaned pump that is submerged in the UST. Only pressurized systems use turbines, also known as submergible turbine pumps (STPs). The most common turbines that are used at gas stations are the 4-inch Extract which is made by Marley (Red Jacket) and the F.E. Petro STP. Marley STPs are painted red and F.E. Petro STPs are blue.

Underground Storage Tank: any one or combination of tanks as set forth in N.J.A.C. 7:14B-1.4, including appurtenant pipes, lines, fixtures, and other related equipment, used to contain an accumulation of hazardous substances, the volume of which, including the volume of the appurtenant pipes, lines, fixtures and other related equipment, is 10 percent or more beneath the surface of the ground.

Underground Storage Tank System or Tank System: an underground storage tank and its associated ancillary equipment and containment system, if any.

Vent Pipe: A pipe that lets air enter an UST when product is dispensed.

Volumetric Line Leak Detector: A mechanical line leak detector (also called a "lunchbox") manufactured by Veeder-Root. It is used on pressurized systems only and is connected by three lines to the submersible turbine pump (STP). It can detect leaks of .1, .2 and 3 gph. If a leak is detected, it stops the flow of product to the lines.

Waste Oil: means but is not limited to used oil and waste oil as defined in N.J.A.C. 7:26E.

Wellhead Protection Area: 1) The area within a 2,000 foot radius surrounding a public community or public non-community water system well when there is an underground storage tank containing gasoline or non-petroleum hazardous substances located within that area; 2) The area within a 750-foot radius surrounding a public community or public non-community water system well when there is an underground storage tank containing petroleum products other than gasoline located within that area.

Wilco Simmons: a wireless tank monitoring system that consists of a battery-powered radar probe that measures product level in the tank, and a receiver that is located in the station office. The tank readings are sent by phone line to Texas where they are processed for SIR tank and line leak detection. This system is somewhat rare, but it may be seen more in the future.

WLLD: Wireless line leak detector is an electro-mechanical device that monitors line pressure, and if a pressure drop is noted, the device turns off the submersible turbine pump (STP). Several different types exist and they test the line to .1, .2 and 3 gph. Common units are made by Veeder-Root and Incon.

Eligibility Requirements for Certification

UST INSTALLER

Financial Assurance: An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance. (\$250,000)

Training: For initial and renewal certification, an applicant must have successfully completed an underground storage tank installer approved training course within the six-month period prior to the application in a program approved by the Executive Secretary. Training shall include: Pre-installation tank testing, tank site preparation including anchoring, tank placement, backfilling, cathodic protection installation, service or repair, vent and product piping assembly, fill tube attachment, installation of manholes, pump installation, secondary containment, UST repair, and state and federal statutes, rules and regulations.

Experience: Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank installations.

Examination: An applicant must successfully pass a certification examination.

Fees: Certification fee of \$225 for 2 year certification period.

In addition to UST Installer, installation companies must have:

A. UST Installation Company Permit from the DERR: after July 1, 1994 no individual or underground installation company may install an UST without having a valid UST installation company permit. This permit provides the UST Installation Company with \$1 million of financial assurance for environmental releases after paying \$10,000 per incidence.

Fees: Annual fee of \$2,000 if 15 or fewer USTs were installed in Utah during the prior year.

Annual fee of \$4,000 if 16 or more USTs were installed in Utah during the prior year.

The annual fee is due July 1 each year. There is no proration for portions of the year. A \$60 penalty is assessed for payments which are recieved late.

Installation permit fee of \$200 for installation of each UST system. (See R311-203-3)

B. Petroleum System Contractor Licence from the DOPL:

Training: "Trade training" as required for certification of UST Installer Examination: An applicant must successfully pass the UST Installer certification exam administered by the Division of Environmental Response and Remediation (DERR) and a business and law examination administered by the Division of Professional Licensing (DOPL).

Fees: Examination fee and licensing fee as required by the Division of Professional Licensing.

UST INSTALLER SPECIALTIES

A. Cathodic Protection

Training: Applicant must document specialized training for installation of cathodic protection.

Experience: Each applicant must provide with his application a sworn statement or other evidence of actively participating in a minimum of three installations of cathodic protection of underground storage tanks.

Examination: An applicant must successfully pass a certification examination.

Fees: Certification fee of \$225 for 2 year certification period. No additional fee is required if the applicant is currently certified as an installer and the expiration date remains the same.

B. Lining

Training: Applicant must document specialized training for UST lining.

Experience: Each applicant must provide with his application a sworn statement or other evidence of actively participating in a minimum of three UST linings.

Examination: An applicant must successfully pass a certification examination.

Fees: Certification fee of \$225 for 2 year certification period. No additional fee is required if the applicant is currently certified as an installer and the expiration date remains the same.

UST REMOVER

Financial Assurance: An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance. (\$250,000)

Training: For initial and renewal certification, an applicant must have successfully completed an underground storage tank remover approved training course within the six-

month period prior to the application in a program approved by the Executive Secretary. Training shall include: removal of the soil adjacent to the tank, disassembly of pipe, final removal of sludges from the tank, cleaning of the tank, purging or inerting of the tank, removal of the tank from the ground, removal of the tank from the site, and state and federal statutes, rules and regulations.

Experience: Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank removals.

Examination: An applicant must successfully pass a certification examination.

Fees: Course fees and certification fee of \$225 for 2 year certification period.

UST PRECISION TESTER

Financial Assurance: An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance. (\$50,000)

Training: An applicant must have successfully passed a training course conducted by the manufacturer of the UST precision testing equipment that he will be using.

Performance Standards of Equipment: An applicant shall submit documentation which demonstrates the UST precision testing equipment meets performance standards of R311-202 Part 280.40(a)(3), 280.43(c), and 280.44(b) for tank and product piping tightness testing.

Fees: Course fees and certification fee of \$225 for 2 year certification period.

UST GROUNDWATER AND SOIL SAMPLER

Training: Training shall include: chain of custody, decontamination, EPA testing methods, groundwater and soil sampling protocol, preservation of samples during transportation, coordination with Utah certified labs, state and federal statutes, rules and regulations.

Examination: An applicant must successfully pass a certification examination.

Fees: Course fees and certification fee of \$225 for 2 year certification period.

PERFORMANCE STANDARDS FOR CERTIFICATION

Each certificate holder must comply with performance standards:

(1) shall display his certificate upon request;

- (2) shall comply with all local, state and federal laws and regulations regarding underground storage tank handling in this state;
- (3) shall perform all work such that there is no release of the contents of the tank;
- (4) shall report the discovery of any release caused by or encountered in the course of performing tank handling to the local health district, local public safety office and the Executive Secretary within twenty-four hours;
- (5) shall assure that all operations of UST work which are critical to the integrity of the system and to the protection of the environment.
- (6) shall not proceed to close a regulated UST system without an approved closure plan, except as outlined in R311-204-2(b);
- (7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;
- (8) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where such activity would increase the possibility of a release from an underground storage tank; and,
- (9) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

RECIPROCITY

If the Executive Secretary determines that another state's certification program is equivalent to the certification program provided in R311-201 and payment of any fees associated with R311-202 are made, he may issue a Utah certificate.

INFORMATION

Those persons desiring accommodation for a disability under the Americans With Disabilities Act (ADA) should notify Charlene Lamph, ADA Coordinator, in writing at P.O. Box 144810, SLC, UT 84114 no later than 10 working days before the scheduled testing date. Notification should include medical and/or psychological documentation including a statement of diagnosis and associated functional limitations

For additional information about the Utah Certification Program contact David Wilson at (801)536-4138, or write:

Utah Division of Environmental Response and Remediation (UST),
P.O. Box 144840 168 North 1950 West, first floor,
Salt Lake City, Utah 84114-4840.
Fax: (801)359-8853



State of Utah

JON M. HUNTSMAN, JR.
Governor

GARY HERBERT
Lieutenant Governor

Department of Environmental Quality

Richard W. Sprott
Executive Director

DIVISION OF ENVIRONMENTAL RESPONSE AND REMEDIATION

Brad T. Johnson
Director

ERRU-136-08

September 30, 2008

Dear UST Owners, Operators and Contractors:

Re: **Changes to R311, the Utah Underground Storage Tank (UST) Rules**

As of August 18, 2008, several significant changes have been made to the UST rules that will affect contractors who install UST systems and who upgrade or replace any part of the UST system.

Summary of the Rule Changes:

- **R311-203-2, Notification.**

UST owner/operators are required to notify the DERR (UST) before switching to some alternative fuels in their tanks. "Alternative Fuels" is defined as petroleum based fuel containing more than 20% Biodiesel or more than 10% Ethanol. There may be compatibility issues when these fuels are used in steel tanks, older fiberglass-reinforced plastic tanks, or in tank systems with certain types of fittings, seals, etc. Adding this requirement will help ensure that these problems are minimized.

- **R311-203-3, New Installations, Permits.**

Clarifies the requirements for pre-installation notification to be given by certified installers for new USTs and UST system components. Changes the time frame for notification from 30 days to 10, and adds a requirement for submittal of an as-built drawing after installation of a tank or other UST components.

- **R311-203-6, Requirements for Secondary Containment.**

This section implements the "Additional Measures to Protect Groundwater" provision of the Energy Policy Act of 2005. Beginning October 1, 2008, secondary containment will be required for most new UST installations and upgrades. This includes secondary containment on tanks, piping, and product dispensers. The rule specifies some exceptions to this requirement. Please refer to the web link listed below for details. Interstitial monitoring will be required for all new secondary containment installed under this rule change.

- **R311-206-3, Requirements for Issuance of Certificates of Compliance.**

Owner/operator must submit an **as-built drawing** for new UST installations, prior to the

issuance of a Certificate of Compliance for new installations. A Certificate of Compliance will not be issued without an as-built drawing.

In addition to the above rule changes, DERR (UST) will be asking for documentation of integrity testing on all newly installed secondary containment and spill containment (spill buckets) prior to going into operation. These tests should be conducted according to the equipment manufacturer requirements.

For the full text of the rule changes please refer to:
<http://www.undergroundtanks.utah.gov/newrules.htm>.

If you have any questions concerning this matter or need any assistance, please contact **David Wilson** at (801) 536-4138.

Sincerely,

A handwritten signature in black ink, appearing to read "Brad T. Johnson". The signature is fluid and cursive, with the first name "Brad" and last name "Johnson" clearly distinguishable.

Brad T Johnson, Executive Secretary (UST)
Utah Solid and Hazardous Waste Control Board

BTJ/DJW/lkg



State of Utah

Department of
Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF ENVIRONMENTAL
RESPONSE AND REMEDIATION
Brad T Johnson
Director

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor

ERRU-172-04

October 8, 2004

Re: Recent changes to R311, the Utah Underground Storage Tank (UST) Rules

Dear Contractors:

There have been several significant changes in the UST rules that will affect certified UST Installers and those who repair and or service any part of the UST system.

UST Installer

After January 1, 1991, no person shall install an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. After January 1, 1991, no owner or operator shall allow the installation of an underground storage tank to be conducted on a tank under their ownership or operation unless the person installing the tank is certified according to Rule R311-201. The Executive Secretary may issue a limited certification restricting the type of UST installation the applicant can perform. Utah Admin. Code R311-201-02(e).

The DERR is currently issuing three limited or specialty certifications under the UST Installer certification.

1. Cathodic Protection (CP) Installer
2. Tank Liner
3. Service/Repair Technician

Limited Installer Certification or Service/Repair Technician

This allows for issuing limited certifications for UST installers, so individuals who perform work that falls under the definition of UST installation can be certified without having to meet all the requirements for a "full" Installer certification.

A person must have the limited Installer certification (technician) if they work on any portion of the UST system that is critical to the integrity of the system, this includes:

- Line leak detectors
- Repairs on any portion of the UST system
- Automatic Tank Gauging (ATG) systems
- Probes/sensors
- Overfill and spill devices
- Containment sumps
- Sub-pump

"Underground storage tank" or "UST" means any one or combination of tanks, including underground pipes connected thereto and any underground ancillary equipment and containment system, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground, regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C., Section 6991c et seq. Utah Admin Code R311-203-1(44).

Training

For initial certification, an applicant must have successfully completed an underground storage tank installer training course or equivalent within the six-month period prior to the application. The training course shall be approved by the Executive Secretary. The applicant must provide documentation of training with the application. Utah Admin. Code R311-201-4(e)(2).

Experience

Each applicant for the Service/Repair Technician Certification must provide documentation of training and experience in the type of equipment they will be servicing or repairing. This may include manufacturers certification/training when working with complex systems such as ATGs.

Certification

An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(e)(2), and the standards and criteria against which the applicant will be evaluated. The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination. Utah Admin. Code R311-201-4(e)(4).

If you have any questions concerning this matter or need any assistance, please contact **Gary Harris** at (801) 536-4160.

Sincerely,

Brad T Johnson, Executive Secretary (UST)
Utah Solid and Hazardous Waste Control Board



State of Utah

Department of
Environmental Quality

Dianne R. Nielson, Ph.D.
Executive Director

DIVISION OF ENVIRONMENTAL
RESPONSE AND REMEDIATION
Brad T Johnson
Director

OLENE S. WALKER
Governor

GAYLE F. McKEACHNIE
Lieutenant Governor

ERRU-178-04

October 8, 2004

Re: **Recent changes in the R311 Utah Underground Storage Tank (UST) Rules**

Dear Contractors:

There have been several significant changes in the UST Rules that will affect any contractor who tests Cathodic Protection (CP) Systems and Automatic Line Leak Detectors (ALLD) on USTs. Starting September 9, 2004, any person testing CP and ALLDs in Utah must be a Certified UST Tester and must satisfy the eligibility requirements. UST CP Testers must submit an application with documentation of training in Cathodic Protection Testing and ALLD testers must submit documentation of training for the equipment used for testing ALLDs. Documentation of Financial Assurance and the [REDACTED] Certification Fee, if applicable, must be included with the application. CP and ALLD Testers Certification are a subset of the UST Testers Certification, so if you are currently a Utah UST Precision Tester, you do not need to pay the Certification Fee.

Qualifications for Cathodic Protection Testers

The federal regulation governing USTs, 40 CFR 280.31(b) states that *All UST systems equipped with cathodic protection systems must be inspected for proper operation by a **qualified cathodic protection tester**...* and 40 CFR 280.12 defines a *Cathodic protection tester* as *... a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.*

There are a number of NACE Certifications that meet the above requirements for a Cathodic Protection Tester. The *Cathodic Protection Testers Certification*, *Corrosion Technician Certification* and any higher level of NACE Certifications would satisfy this requirement. If you are NACE Certified, documentation of NACE Certification should be included with your UST CP Tester Application. **NACE Certification is not required to do Cathodic Protection Testing, however, the testers must document an acceptable level of education.**

Cathodic Protection Reporting Requirements

The CP tester who performs the test shall provide (at a minimum), the following information: Location of test points, test results in volts or millivolts, pass/fail determination for each tank, line, flex connector, or other UST system component tested, the criteria by which the pass/fail determination is made, and a site plat showing locations of test points **(R311-203-5(d))**. Cathodic Protection Evaluation forms are available from the Division of Environmental Response and Remediation/UST Section or on our web site <http://undergroundtanks.utah.gov/ustcomp/ustcert.htm>.

Automatic Line Leak Detector Testing Requirements

The test shall simulate a leak and provide a determination based on the test whether the leak detector functions properly and meets the requirements of 40 CFR 280.44(a). If a sump sensor is used as an automatic line leak detector, the sensor shall be located as close as is practical to the lowest portion of the sump **(R311-203-5(b))**. When a sump sensor is used as a leak detector, the containment sump shall be tested for tightness annually, according to the manufacturers guidelines or standards, or by another method approved by the Executive Secretary **(R311-203-5(c))**.

If you have questions concerning this matter or need any assistance, please contact **David Wilson** at (801) 536-4138.

 Sincerely,

Brad T Johnson, Executive Secretary (UST)
Utah Solid and Hazardous Waste Control Board

BTJ/DJW/hsp

UTAH UST INSTALLER RE-CERTIFICATION APPLICATION

Applicant Name: _____

Employer Name: _____

Address: _____

City, State, Zip: _____

Telephone Number: _____ Fax Number _____

Email Address: _____

FOR STATE USE ONLY

Test Score: _____ Pass/Fail

Fee Processed: _____

Certificate No.: TL _____

Expiration Date: _____

☐ Please do not put my employer name on the certificate or card

Type of Installer: ☐ General ☐ Technician ☐ Cathodic Protection ☐ Tank Lining

FINANCIAL ASSURANCE

Complete the Financial Assurance Agreement form on the back page. A current certificate of insurance or other approved form of Financial Assurance must be attached to this application. **The application WILL NOT be accepted without documentation of Financial Assurance.**

UTAH CERTIFICATION FEE

Date of Payment: _____ Amount: \$ _____

Please return completed application and fee to the following address:

**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DERR/UST SECTION
168 NORTH 1950 WEST, 1ST FLOOR
SALT LAKE CITY, UTAH 84116**

I hereby certify that the forgoing information is true and that I have read the certification requirements for the UST Installer in the Utah Administrative Code Section R311-201. I will conform to the standards of performance as outlined in Section R311-201-6. I understand that submittal of false or misleading information in this application may result in revocation in the certificate.

Signature: _____ Date: _____

FINANCIAL ASSURANCE AGREEMENT

APPLICANTS AGREEMENT

I hereby acknowledge and agree that I will satisfy the Financial Assurance requirements of the Utah Administrative Code Section R311-201-4 by one of the alternative Financial Assurance mechanisms described herein.

Applicants Signature: _____ Date: _____

EMPLOYERS AGREEMENT

I hereby represent that the applicant named above is an employee and agree that as the employer of the applicant, I will satisfy the Financial Assurance requirements of R311-201-4 by one or more of the alternative Financial Assurance mechanisms described herein so long as the applicant is in my employ.

Employers Signature: _____ Date: _____

Employers Title: _____ Company Name: _____

☐ Is the applicants employer a sole proprietorship or dba?

☐ Is the applicants employer a partnership? Identify partner: _____

☐ Is the applicants employer a corporation? Identify state of incorporation: _____

TYPES OF FINANCIAL ASSURANCE

The description of the type of Financial Assurance provided by the applicant should include the following information (documentation should also be submitted, e.g. Certificate of Insurance):

INSURANCE

Name of insurance company
Type of policy (comprehensive, general liability)
Per occurrence and aggregate coverage amounts
Coverage period
Renewal of expiration date
Named or designated insured
Exclusions or limitations

SURETY BOND

Name of surety company
Identification number or reference
Coverage amount per claim, aggregate amount, and limitations
Exclusions or limitations

LETTER OF CREDIT

Name of issuing financial institution
Date of issuance and duration
Amount of available credit
Limitation on payment and demand

RISK POOL

Self-insurance among members of risk pool
Verify membership pool
Coverage amount per claim, aggregate amount
Limitations on coverage
Terms and conditions of payment of claims

SELF-INSURANCE

Value of unencumbered assets available
Supporting audited financial statement(s)
Ratio of Value of unencumbered assets

UTAH UST REMOVER RE-CERTIFICATION APPLICATION

Applicant Name: _____

Employer Name: _____

Address: _____

City, State, Zip: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

FOR STATE USE ONLY

Test Score: _____ Pass/Fail

Fee Processed: _____

Certificate No.: TR _____

Expiration Date: _____

[] Please do not put my employer name on my certificate or card

FINANCIAL ASSURANCE

Complete the Financial Assurance Agreement form on the back page. A current certificate of insurance or other approved form of Financial Assurance must be attached to this application. **The application WILL NOT be accepted without documentation of Financial Assurance.**

UTAH CERTIFICATION FEE

Date of Payment: _____ Amount: \$ _____

Please return completed application and fee to the following address:

**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DERR/UST SECTION
168 NORTH 1950 WEST, 1ST FLOOR
SALT LAKE CITY, UTAH 84116**

I hereby certify that the forgoing information is true and that I have read the certification requirements for the UST Remover in the Utah Administrative Code Section R311-201. I will conform to the standards of performance as outlined in Section R311-201-6. I understand that submittal of false or misleading information in this application may result in revocation in the certificate.

Signature: _____ Date: _____

FINANCIAL ASSURANCE AGREEMENT

APPLICANTS AGREEMENT

I hereby acknowledge and agree that I will satisfy the Financial Assurance requirements of the Utah Administrative Code Section R311-201-4 by one of the alternative Financial Assurance mechanisms described herein.

Applicants Signature: _____ Date: _____

EMPLOYERS AGREEMENT

I hereby represent that the applicant named above is an employee and agree that as the employer of the applicant, I will satisfy the Financial Assurance requirements of R311-201-4 by one or more of the alternative Financial Assurance mechanisms described herein so long as the applicant is in my employ.

Employers Signature: _____ Date: _____

Employers Title: _____ Company Name: _____

☐ Is the applicants employer a sole proprietorship or dba?

☐ Is the applicants employer a partnership? Identify partner: _____

☐ Is the applicants employer a corporation? Identify state of incorporation: _____

TYPES OF FINANCIAL ASSURANCE

The description of the type of Financial Assurance provided by the applicant should include the following information (documentation should also be submitted, eg. Certificate of Insurance):

INSURANCE

Name of insurance company
Type of policy (comprehensive, general liability)
Per occurrence and aggregate coverage amounts
Coverage period
Renewal of expiration date
Named or designated insured
Exclusions or limitations

SURETY BOND

Name of surety company
Identification number or reference
Coverage amount per claim, aggregate amount, and limitations
Exclusions or limitations

LETTER OF CREDIT

Name of issuing financial institution
Date of issuance and duration
Amount of available credit
Limitation on payment and demand

RISK POOL

Self-insurance among members of risk pool
Verify membership pool
Coverage amount per claim, aggregate amount
Limitations on coverage
Terms and conditions of payment of claims

SELF-INSURANCE

Value of unencumbered assets available
Supporting audited financial statement(s)
Ratio of Value of unencumbered assets

UTAH UST PRECISION TESTER APPLICATION

Applicant Name: _____

Employer Name: _____

Address: _____

City, State, Zip: _____

Telephone Number: _____ Fax Number _____

Email Address: _____

FOR STATE USE ONLY

Test Score: _____ Pass/Fail

Fee Processed: _____

Certificate No.: UT _____

Expiration Date: _____

☐ Please do not put my employer name on the certificate or card

Type of testing: ☐ Tank ☐ Lines ☐ Leak Detector ☐ Cathodic Protection

FINANCIAL ASSURANCE

Documentation of financial assurance must be submitted with the application.

Insurance, type, and amount: _____

Value of the largest underground storage tank removing contract performed by the applicant or the applicants employer during the previous two years \$ _____.

Applicants financial assurance is provided by the one marked below:

☐ Applicant (i.e., self assurance). Complete FINANCIAL ASSURANCE AGREEMENT.

☐ Employer (Company agent must authorize use of assurance-Authorization Signature required below) complete FINANCIAL ASSURANCE AGREEMENT.

Employers Signature: _____ Date: _____

Print Name: _____ Date: _____

TRAINING

Organization Providing Training: _____

Training Date: _____ Exam Date: _____

TRAINING FOR TESTING EQUIPMENT

Manufacturer of Equipment: _____

Model No. or Name: _____

Type of Equipment: ☐ Tank Testing Equipment
 ☐ Line Testing Equipment

Organization Providing Training: _____ Phone: _____

Location of Training: _____ Date: _____

EPA VALIDATION

Documentation of third-party evaluation must be submitted with the application.

- ☐ The testing equipment described above has been evaluated by an independent laboratory.
- ☐ The Tank Testing Equipment has demonstrated the ability to recognize a 0.1 gallon per hour leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05 from any portion of the tank that could contain product.
- ☐ The Line Testing Equipment has demonstrated the ability to recognize a 0.1 gallon per hour leak rate at one and one-half times the operation pressure.
- ☐ Another method approved by the Executive Secretary (UST) had demonstrated the ability to detect 0.1 gallon leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05 from any portion of the tank system that could contain product.

Laboratory Performing Testing: _____ Phone: _____

Location of Testing: _____ Date: _____

UTAH CERTIFICATION FEE

Date of Payment: _____ Amount: \$ _____

Please return completed application and fee to the following address:

**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DERR/UST SECTION
168 NORTH 1950 WEST, 1ST FLOOR
SALT LAKE CITY, UTAH 84116**

I hereby certify that the forgoing information is true and that I have read the certification requirements for the UST Tester in the Utah Administrative Code Section R311-201. I will conform to the standards of performance as outlined in Section R311-201-6. I understand that submittal of false or misleading information in this application may result in revocation in the certificate.

Signature: _____ Date: _____

UTAH UST GROUNDWATER AND SOIL SAMPLER RE-CERTIFICATION APPLICATION

Applicant Name: _____

Employer Name: _____

Address: _____

City, State, Zip: _____

Telephone Number: _____ Fax Number: _____

Email Address: _____

FOR STATE USE ONLY

Test Score: _____ Pass/Fail

Fee Processed: _____

Certificate No.: GS _____

Expiration Date: _____

☐ Please do not put my employer name on the certificate or card.

☐ Card Only ☐ Card and Certificate

TRAINING

Organization Providing Training: _____

Training Date: _____ Exam Date: _____

UTAH CERTIFICATION FEE

Date of Payment: _____ Amount: \$ _____

Please return completed application and fee to the following address:

**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
DERR/UST SECTION
168 NORTH 1950 WEST, 1ST FLOOR
SALT LAKE CITY, UTAH 84116**

I hereby certify that the forgoing information is true and that I have read the certification requirements for the UST Groundwater and Soil Sampler in the Utah Administrative Code Section R311-201. I will conform to the standards of performance as outlined in Section R311-201-6. I understand that submittal of false or misleading information in this application may result in revocation in the certificate.

Signature: _____ Date: _____

R311. Environmental Quality, Environmental Response and Remediation.**R311-200. Underground Storage Tanks: Definitions.****R311-200-1. Definitions.**

- (a) Refer to Section 19-6-402 for definitions not found in this rule.
- (b) For purposes of underground storage tank rules:
 - (1) "Actively participated" for the purpose of the certification programs means that the individual applying for certification must have had operative experience for the entire project from start to finish, whether it be an installation or a removal.
 - (2) "Alternative Fuel" means a petroleum-based fuel containing:
 - (A) more than ten percent ethanol, or
 - (B) more than twenty percent biodiesel.
 - (3) "As-built drawing" for purpose of notification means a drawing to scale of newly constructed USTs. The USTs shall be referenced to buildings, streets and limits of the excavation. The drawing shall show the locations of tanks, product lines, dispensers, vent lines, cathodic protection systems, and monitoring wells. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17".
 - (4) "Automatic line leak detector test" means a test that simulates a leak, and causes the leak detector to restrict or shut off the flow of regulated substance through the piping or trigger an audible or visual alarm.
 - (5) "Backfill" means any foreign material, usually pea gravel or sand, which usually differs from the native soil and is used to support or cover the underground storage tank system.
 - (6) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100.
 - (7) "Burden" means the addition of the percentage of indirect costs which are added to raw labor costs.
 - (8) "Certificate" means a document that evidences certification.
 - (9) "Certification" means approval by the Executive Secretary or the Board to engage in the activity applied for by the individual.
 - (10) "Change-in-service" means the continued use of an UST to store a non-regulated substance.
 - (11) "Community Water System" means a public water system that serves at least fifteen service connections used by year-round residents or regularly serves at least 25 year-round residents.
 - (12) "Confirmation sample" means an environmental sample taken, excluding closure samples as outlined in Section R311-205-2, during soil overexcavation or any other remedial or investigation activities conducted for the purpose of determining the extent and degree of contamination.
 - (13) "Customary, reasonable and legitimate expenses" means costs incurred during the investigation, abatement and corrective actions that address a release which are normally charged according to accepted industry standards, and which must be justified in an audit as an appropriate cost. The costs must be directly related to the tasks performed.
 - (14) "Customary, reasonable and legitimate work" means work for investigation, abatement and corrective action that is required to reduce contamination at a site to levels that are protective of human health and the environment. Acceptable levels may be established by risk-based analysis and taking into account current or probable land use as determined by the Executive Secretary following the criteria in R311-211.
 - (15) "Department" means the Utah Department of Environmental Quality.
 - (16) "Eligible exempt underground storage tank" for the purpose of eligibility for the Utah Petroleum Storage Tank Trust Fund means a tank specified in 19-6-415(1).
 - (17) "Environmental Consultant" or "Consultant" is an individual who provides or contracts to provide information, an opinion, or advice for a fee, or in conjunction with services for which a fee is charged, relating to underground storage tank management, release abatement, investigation, corrective action, or evaluation.
 - (18) "Environmental sample" is a groundwater, surface water, air, or soil sample collected, using appropriate methods, for the purpose of evaluating environmental contamination.
 - (19) "EPA" means the United States Environmental Protection Agency.
 - (20) "Expediently disposed of" means disposed of as soon as practical so as not to become a potential threat to human health or safety or the environment, whether foreseen or unforeseen as determined by the Executive Secretary.
 - (21) "Fiscal year" means a period beginning July 1 and ending June 30 of the following year.

- (22) "Full installation" for the purposes of 19-6-411(2) means the installation of an underground storage tank.
- (23) "Groundwater sample" is a sample of water from below the surface of the ground collected according to protocol established in Rule R311-205.
- (24) "Groundwater and soil sampler" is the person who performs environmental sampling for compliance with Utah underground storage tank rules.
- (25) "In use" means that an operational, inactive or abandoned underground storage tank contains a regulated substance, sludge, dissolved fractions, or vapor which may pose a threat to human health, safety or the environment as determined by the Executive Secretary.
- (26) "Lapse" in reference to the Certificate of Compliance and coverage under the Petroleum Storage Tank Trust Fund, means to terminate automatically.
- (27) "Native soil" means any soil that is not backfill material, which is naturally occurring and is most representative of the localized subsurface lithology and geology.
- (28) "No Further Action determination" means that the Executive Secretary has evaluated information provided by responsible parties or others about the site and determined detectable petroleum contamination from a particular release does not present an unacceptable risk to public health or the environment based upon Board established criteria in R311. If future evidence indicates contamination from that release may cause a threat, further corrective action may be required.
- (29) "Notice of agency action" means any enforcement notice, notice of violation, notice of non-compliance, order, or letter issued to an individual for the purpose of obtaining compliance with underground storage tank rules and regulations.
- (30) "Occurrence" in reference to Subsection R311-208-4 means a separate petroleum fuel delivery to a single tank.
- (31) "Owners and operators" means either an owner or operator, or both owner and operator.
- (32) "Overexcavation" means any soil removed in an effort to investigate or remediate in addition to the minimum amount required to remove the UST or take environmental samples during UST closure activities as outlined in Section R311-205-2.
- (33) "Permanently closed" means underground storage tanks that are removed from service following guidelines in 40 CFR Part 280 Subpart G adopted by Section R311-202.
- (34) "Petroleum storage tank" means a storage tank that contains petroleum as defined by Section 19-6-402(20).
- (35) "Petroleum storage tank fee" means the fee which capitalizes the Petroleum Storage Tank Trust Fund as established in Section 19-6-409.
- (36) "Petroleum storage tank trust fund" means the fund created by Section 19-6-409.
- (37) "Potable Drinking Water Well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater which supplies water for a non-community public water system, or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such well may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities.
- (38) "Public Water System" means a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. It includes any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.
- (39) "Registration fee" means underground storage tank registration fee.
- (40) "Regulated substance" means any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act "CERCLA" of 1980, but not including any substance regulated as a hazardous waste under subtitle C, and petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure, 60 degrees Fahrenheit and 14.7 pounds per square inch absolute. The term "regulated substance" includes petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and

finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

(41) "Secondary Containment" means a release prevention and detection system for a tank or piping that has an inner and outer barrier with an interstitial space between them for monitoring. The monitoring of the interstitial space shall meet the requirements of 40 CFR 280.43(g).

(42) "Site assessment" or "site check" is an evaluation of the level of contamination at a site which contains or has contained an UST.

(43) "Site assessment report" is a summary of relevant information describing the surface and subsurface conditions at a facility following any abatement, investigation or assessment, monitoring, remediation or corrective action activities as outlined in Rule R311-202, Subparts E and F.

(44) "Site investigation" is work performed by the owner or operator, or his designee, when gathering information for reports required for Utah underground storage tank rules.

(45) "Site plat" for purpose of notification, or reporting, refers to a drawing to scale of USTs in reference to the facility. The scale should be dimensioned appropriately. Drawing size shall be limited to 8-1/2" x 11" if possible, but shall in no case be larger than 11" x 17". The site plat should include the following: property boundaries; streets and orientation; buildings or adjacent structures surrounding the facility; present or former UST(s); extent of any excavation(s) and known contamination and location and volume of any stockpiled soil; locations and depths of all environmental samples collected; locations and total depths of monitoring wells, soil borings or other measurement or data points; type of ground-cover; utility conduits; local land use; surface water drainage; and other relevant features.

(46) "Site under control" means that the site of a release has been actively addressed by the owner or operator who has taken the following measures:

(A) Fire and explosion hazards have been abated.

(B) Free flow of the product out of the tank has been stopped.

(C) Free product is being removed from the soil, groundwater or surface water according to a work plan or corrective action plan approved by the Executive Secretary.

(D) Alternative water supplies have been provided to affected parties whose original water supply has been contaminated by the release.

(E) A soil or groundwater management plan or both have been submitted for approval by the Executive Secretary.

(47) "Soil sample" is a sample collected following the protocol established in Rule R311-205.

(48) "Surface water sample" is a sample of water, other than a groundwater sample, collected according to protocol established in Rule R311-205.

(49) "Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials, such as concrete, steel, or plastic, that provide structural support.

(50) "UAPA-exempt orders" are orders that are exempt from requirements of the Utah Administrative Procedures Act under Section 63G-4-102(2)(k), Utah Code Annot.

(51) "Under-Dispenser Containment" means containment underneath a dispenser that will prevent leaks from the dispenser or transitional components that connect the piping to the dispenser (check valves, shear valves, unburied risers or flex connectors, or other components that are beneath the dispenser) from reaching soil or groundwater.

(52) "Underground storage tank" or "UST" means any one or combination of tanks, including underground pipes connected thereto and any underground ancillary equipment and containment system, that is used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground pipes connected thereto, is ten percent or more beneath the surface of the ground, regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C., Section 6991c et seq.

(53) "Underground storage tank registration fee" means the fee assessed by Section 19-6-408 on tanks located in Utah.

(54) "UST inspection" is the inspection required by state and federal underground storage tank rules and regulations during the installation, testing, repairing, operation or maintenance, and removal of regulated underground storage tank.

(55) "UST inspector" is an individual who performs underground storage tank inspections for compliance

with state and federal rules and regulations.

(56) "UST installation" means the installation of an underground storage tank, including construction, placing into operation, building or assembling an underground storage tank in the field. It includes any operation that is critical to the integrity of the system and to the protection of the environment, which includes:

- (A) pre-installation tank testing, tank site preparation including anchoring, tank placement, and backfilling;
- (B) vent and product piping assembly;
- (C) cathodic protection installation, service, and repair;
- (D) internal lining;
- (E) secondary containment construction; and
- (F) UST repair and service.

(57) "UST installation permit fee" means the fee established by Section 19-6-411(2)(a)(ii).

(58) "UST installer" means an individual who engages in underground storage tank installation.

(59) "UST removal" means the removal of an underground storage tank system, including permanently closing and taking out of service all or part of an underground storage tank.

(60) "UST remover" means an individual who engages in underground storage tank removal.

(61) "UST tester" means an individual who engages in UST testing.

(62) "UST testing" means a testing method which can detect leaks in an underground storage tank system, or testing for compliance with corrosion protection requirements. Testing methods must meet applicable performance standards of 40 CFR 280.40(a)(3), 280.43(c), and 280.44(b) for tank and product piping tightness testing, 280.44(a) for automatic line leak detector testing, and 280.31(b) for cathodic protection testing.

R311. Environmental Quality, Environmental Response and Remediation.

R311-201. Underground Storage Tanks: Certification Programs.

R311-201-1. Definitions.

Definitions are found in Rule R311-200.

R311-201-2. Certification Requirement.

(a) Certified UST Consultant. After December 31, 1995, no person shall provide or contract to provide information, opinions, or advice relating to UST release management, abatement, investigation, corrective action, or evaluation for a fee, or in connection with the services for which a fee is charged, without having certification to conduct these activities, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b). The Certified UST Consultant shall be the person directly overseeing UST release-related work. The Certified UST Consultant shall make pertinent project management decisions and be responsible for ensuring that all aspects of UST-related work are performed in an appropriate manner, and all related documentation for work performed submitted to the Executive Secretary shall contain the Certified UST Consultant's signature. After December 31, 1995, any release abatement, investigation, and corrective action work performed by a person who is not certified or who is not working under the direct supervision of a Certified UST Consultant, and is performed for compliance with Utah underground storage tank release-related rules, except as outlined in Subsections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii) and R311-204-5(b), may be rejected by the Executive Secretary.

(b) UST Inspector. After December 31, 1989, no person shall conduct underground storage tank inspection for determining compliance with Utah underground storage tank rules without having certification to conduct these activities. After December 31, 1989, no owner or operator shall allow any underground storage tank inspections for determining compliance with Utah underground storage tank rules to be conducted on a tank under their ownership or operation unless the person conducting the tank inspection is certified according to Rule R311-201.

(c) UST tester. After December 31, 1989, no person shall conduct UST testing without having certification to conduct such activities. After December 31, 1989, no owner or operator shall allow UST testing to be conducted on an UST under their ownership or operation unless the person conducting the UST testing is certified according to Rule R311-201. Certification by the Executive Secretary under this Rule for tank, line and leak detector testing shall apply only to the specific UST testing equipment and procedures for which the UST tester has been successfully trained by the manufacturer of the equipment or by training determined by the Executive Secretary to be equivalent to the manufacturer training. The Executive Secretary may issue a limited certification restricting the type of UST

testing the applicant can perform.

(d) Groundwater and soil sampler. After December 31, 1989, no person shall conduct groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks without having certification to conduct these activities. After December 31, 1989, no owner or operator shall allow any groundwater or soil sampling for determining levels of contamination which may have occurred from regulated underground storage tanks to be conducted on a tank under their ownership or operation unless the person conducting the groundwater or soil sampling is certified according to Rule R311-201.

(e) UST Installer. After January 1, 1991, no person shall install an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. After January 1, 1991, no owner or operator shall allow the installation of an underground storage tank to be conducted on a tank under their ownership or operation unless the person installing the tank is certified according to Rule R311-201. The Executive Secretary may issue a limited certification restricting the type of UST installation the applicant can perform.

(f) UST Remover. After January 1, 1991, no person shall remove an underground storage tank without having certification or the on-site supervision of an individual having certification to conduct these activities. After January 1, 1991, no owner or operator shall allow the removal of an underground storage tank to be conducted on a tank under their ownership or operation unless the person conducting the tank removal is certified according to Rule R311-201.

R311-201-3. Application for Certification.

(a) Any individual may apply for certification by paying any applicable fees and by submitting an application to the Executive Secretary to demonstrate that the applicant

(1) meets applicable eligibility requirements specified in Subsection R311-201-4 and

(2) will maintain the applicable performance standards specified in Subsection R311-201-6 after receiving a certificate.

(b) Applications submitted under Subsection R311-201-3(a) shall be reviewed by the Executive Secretary for determination of eligibility for certification. If the Executive Secretary determines that the applicant meets the applicable eligibility requirements described in Subsection R311-201-4 and meets the standards described in Subsection R311-201-6, the Executive Secretary shall issue to the applicant a certificate.

(c) Certification for all certificate holders shall be effective for a period of two years from the date of issuance, unless revoked before the expiration date pursuant to Section R311-201-9 or inactivated pursuant to Section R311-201-8. Certificates shall be subject to periodic renewal pursuant to Subsection R311-201-5.

R311-201-4. Eligibility for Certification.

(a) Certified UST Consultant.

(1) Training. For initial and renewal certification, an applicant must meet Occupational Safety and Health Agency safety training requirements in accordance with 29 CFR 1910.120 and any other applicable safety training, as required by federal and state law, and within a six-month period prior to application must complete an approved training course or equivalent in a program approved by the Executive Secretary to provide training to include the following areas: state and federal statutes, rules and regulations, groundwater and soil sampling, and other applicable and related Department of Environmental Quality policies.

(2) Experience. Each applicant must provide with the application a signed statement or other evidence demonstrating three years, within the past seven years, of appropriately related experience in underground storage tank release abatement, investigation, and corrective action, or an equivalent combination of appropriate education and experience, as determined by the Executive Secretary.

(3) Education. Each applicant must provide with the application college transcripts or other evidence demonstrating the following:

(A) a bachelor's or advanced degree from an accredited college or university with major study in environmental health, engineering, biological, chemical, environmental, or physical science, or a specialized or related scientific field, or equivalent education/experience as determined by the Executive Secretary;

(B) a professional engineering certificate licensed under Title 58, Chapter 22, of the Professional Engineers and Land Surveyors Licensing Act or equivalent certification as determined by the Executive Secretary; or

(C) a professional geologist certificate licensed under Title 58, Chapter 76 of the Professional Geologist Licensing Act, or equivalent certification as determined by the Executive Secretary.

(4) Initial Certification Examination. Each applicant who is not certified pursuant to R311-201-3 must successfully pass an initial certification examination or equivalent administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial examination based on the training requirements as outlined in Subsection R311-201-4(a)(1).

(5) Renewal Certification Examination. Certified UST Consultants seeking to renew their certification pursuant to R311-201-5 must successfully pass a renewal certification examination or equivalent administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the renewal examination based on the training requirements as outlined in Subsection R311-201-4(a)(1). The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(6) Examination for Revoked or Expired Certification. Any applicant who is not a Certified UST Consultant on the date the renewal certification examination is given, because the consultant's prior UST Consultant certification was revoked or expired prior to completing a renewal application, must successfully pass the initial certification examination administered under R311-201-4(a)(4).

(b) UST Inspector.

(1) Training. For initial certification, an applicant must have successfully completed an underground storage tank inspector training course or equivalent within the six month period prior to application. The training course shall be approved by the Executive Secretary and shall include instruction in the following areas: corrosion, geology, hydrology, tank handling, tank testing, product piping testing, disposal, safety, sampling methodology, state site inspection protocol, state and federal statutes, rules and regulations. Renewal certification training will be established by the Executive Secretary. The applicant must provide documentation of training with the application.

(2) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(b)(1), and the standards and criteria against which the applicant will be evaluated. The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(c) UST Tester.

(1) Financial Assurance. An applicant or applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers UST testing and which, in combination, represent an unencumbered value of the largest UST testing contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$50,000, whichever is greater. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the certification application.

(2) Training.

(A) Tank and product piping tightness testing, and automatic line leak detector testing. For initial certification, an applicant must have successfully passed a training course conducted by the manufacturer of the UST testing equipment that he will be using, or a training course determined by the Executive Secretary to be equivalent to the manufacturer training, in the correct use of the necessary equipment, and testing procedures required to operate the UST test system. An applicant for renewal of certification must have successfully passed an appropriate refresher training course conducted by the manufacturer of the UST testing equipment that he will be using, or training as determined by the Executive Secretary to be equivalent to the manufacturer training, in the correct use of the necessary equipment, and testing procedures required to operate the UST test system. For renewal certification, refresher training or equivalent must be completed within one year prior to the expiration date of the certificate. In addition, an applicant must complete underground storage tank testers training within the six month period prior to application in a program approved by the Executive Secretary to provide training to include applicable and related areas of state and federal statutes, rules and regulations. Renewal certification training will be established by the Executive Secretary. The applicant must provide documentation of training with the application.

(B) Cathodic protection testing. For initial and renewal of certification, the applicant shall provide documentation of training as a "Cathodic protection tester" as defined in 40 CFR 280.12. The applicant shall provide documentation of training with the application.

(3) Performance Standards of Equipment. An applicant shall submit documentation that demonstrates the UST testing equipment used by the applicant meets performance standards of 40 CFR Part 280.40(a)(3), 280.43(c), and 280.44(b) for tank and product piping tightness testing. This documentation shall be obtained through an independent lab, professional engineering firm, or other independent organization or individual approved by the Executive Secretary. The documentation shall be submitted at the time of application for certification.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(c)(2), and the standards and criteria against which the applicant will be evaluated. The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(d) Groundwater and soil sampler.

(1) Training. For initial certification an applicant shall successfully complete an underground storage tank groundwater and soil sampler training course or equivalent within the six month period prior to application. The training course shall be approved by the Executive Secretary and shall include instruction in the following areas: chain of custody, decontamination, EPA testing methods, groundwater and soil sampling protocol, preservation of samples during transportation, coordination with Utah certified labs, state and federal statutes, rules and regulations. Renewal certification training will be determined by the Executive Secretary. The applicant shall provide documentation of training with the application.

(2) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and subsequent examinations, based on the training requirements as outlined in Subsection R311-201-4(d)(1), and the standards and criteria against which the applicant will be evaluated. The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(e) UST Installer.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank installation and which, in combination, represents an unencumbered value of not less than the largest underground storage tank installation contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) Training. For initial certification, an applicant must have successfully completed an underground storage tank installer training course or equivalent within the six-month period prior to the application. The training course shall be approved by the Executive Secretary, and shall include instruction in the following areas: tank installation, preinstallation tank testing, product piping testing, excavation, anchoring, backfilling, secondary containment, leak detection methods, piping, electrical, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) Experience. Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank installations.

(4) Certification Examination. An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(e)(2), and the standards and criteria against which the applicant will be evaluated. The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

(f) UST Remover.

(1) Financial assurance. An applicant or the applicant's employer shall have insurance, surety bonds, liquid company assets or other appropriate kinds of financial assurance which covers underground storage tank removal and which, in combination, represents an unencumbered value of not less than the largest underground storage tank removal contract performed by the applicant or the applicant's employer, as appropriate, during the previous two years, or \$250,000, whichever is greater. Evidence of financial assurance shall be provided with the application. An applicant who uses his employer's financial assurance must also provide evidence of his employer's approval of the application.

(2) **Training.** For initial certification, an applicant must have successfully completed an underground storage tank remover approved training course or equivalent within the six-month period prior to the application. The training course shall be approved by the Executive Secretary and shall include instruction in the following areas: tank removal, tank removal safety practices, state and federal statutes, rules and regulations. The applicant must provide documentation of training with the application.

(3) **Experience.** Each applicant must provide with his application a sworn statement or other evidence that he has actively participated in a minimum of three underground storage tank removals.

(4) **Certification Examination.** An applicant must successfully pass a certification examination administered under the direction of the Executive Secretary. The Executive Secretary shall determine the content of the initial and renewal examinations, based on the training requirements as outlined in Subsection R311-201-4(f)(2), and the standards and criteria against which the applicant will be evaluated. The Executive Secretary may offer a renewal certification examination that is less comprehensive than the initial certification examination.

R311-201-5. Renewal.

(a) A certificate holder may apply for certificate renewal not more than six months prior to the expiration date of the certificate by:

(1) submitting a completed application form to demonstrate that the applicant meets the applicable eligibility requirements described in R311-201-4 and meets the applicable performance standards specified in R311-201-6;

(2) paying any applicable fees, and

(3) passing a certification renewal examination.

(b) If the Executive Secretary determines that the applicant meets the applicable eligibility requirements of R311-201-4 and the applicable performance standards of R311-201-6, the Executive Secretary shall reissue the certificate to the applicant.

(c) Renewal certificates shall be issued for a period equal to the initial certification period, and shall be subject to inactivation under R311-201-8 and revocation under R311-201-9.

(d) Any applicant who has a certification which has been revoked or expired for more than two years prior to submitting a renewal application shall successfully satisfy the training and certification examination requirements for initial certification under R311-201-4 for the applicable certificate before receiving the renewal certification, except as provided in R311-201-4(a)(6) for certified UST consultants.

R311-201-6. Standards of Performance.

(a) **Certified UST Consultant.** An individual who provides UST consulting services in the State of Utah:

(1) shall display the certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding UST release-related consulting in this state;

(3) shall provide, or shall associate appropriate personnel in order to provide a high level of experience and expertise in release abatement, investigation, or corrective action;

(4) shall perform, or take steps to ensure that work is performed with skill, care, and diligence consistent with a high level of experience and expertise in release abatement, investigation, or corrective action;

(5) shall perform work and submit documentation in a timely manner as determined by the Executive Secretary and in a format established by the Division of Environmental Response and Remediation, as outlined in the most recent Consultant's Day Seminar Handbook;

(6) shall review and certify by signature any documentation submitted to the Executive Secretary in accordance with UST release-related compliance;

(7) shall ensure and certify by signature all pertinent release abatement, investigation, and corrective action work performed under the direct supervision of a Certified UST Consultant;

(8) shall report the discovery of any release caused by or encountered in the course of performing environmental sampling for compliance with Utah underground storage tank rules, or report the results indicating that a release may have occurred, to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(9) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance

of work for which certification is granted; and,

(10) shall not participate in any other activities regulated under Rule R311-201 without meeting all requirements of that certification program.

(b) UST Inspector. An individual who performs underground storage tank inspecting for the Division of Environmental Response and Remediation:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank inspecting in this state;

(3) shall report the discovery of any release caused by or encountered in the course of performing tank inspecting to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(4) shall conduct inspections of USTs and records to determine compliance with this rule only as authorized by the Executive Secretary.

(5) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,

(7) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(c) UST Tester. An individual who performs UST testing in the State of Utah:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding UST testing in this state;

(3) shall perform all work in a manner that there is no release of the contents of the tank;

(4) shall report the discovery of any release caused by or encountered in the course of performing tank testing to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(5) shall assure that all operations of UST testing which are critical to the integrity of the system and to the protection of the environment shall be supervised by a certified person;

(6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release or suspected release from an underground storage tank or which would falsify UST testing results of the underground storage tank system;

(8) shall perform work in a manner that the integrity of the underground storage tank system is maintained; and,

(9) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(d) Groundwater and soil sampler. An individual who performs environmental sampling for compliance with Utah underground storage tank rules:

(1) shall display his certificate upon request;

(2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank sampling in this state;

(3) shall report the discovery of any release caused by or encountered in the course of performing groundwater or soil sampling or report the results indicating that a release may have occurred to the local health district, local public safety office and the Executive Secretary within twenty-four hours;

(4) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;

(5) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted; and,

(6) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(e) UST Installer. An individual who performs underground storage tank installation in the State of Utah:

- (1) shall display his certificate upon request;
- (2) shall comply with all local, state and federal laws, rules and regulations regarding underground storage tank installation in this state;
- (3) shall perform all work in a manner that there is no release of the contents of the tank;
- (4) shall report the discovery of any release caused by or encountered in the course of performing tank installation to the local health district, local public safety office and the Executive Secretary within twenty-four hours;
- (5) shall assure that all operations of tank installation which are critical to the integrity of the system and to the protection of the environment which includes preinstallation tank testing, tank site preparation including anchoring, tank placement, backfilling, cathodic protection installation, service, or repair, vent and product piping assembly, fill tube attachment, installation of tank manholes, pump installation, secondary containment construction, and UST repair shall be supervised by a certified person;
- (6) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;
- (7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release from an underground storage tank; and
- (8) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program.

(9) shall notify the Executive Secretary 30 days before installing or upgrading an UST.

(f) UST Remover. An individual who performs underground storage tank removal in the State of Utah:

- (1) shall display his certificate upon request;
- (2) shall comply with all local, state and federal laws and regulations regarding underground storage tank removal in this state;
- (3) shall perform all work in a manner that there is no release of the contents of the tank;
- (4) shall report the discovery of any release caused by or encountered in the course of performing tank removal to the local health district, local public safety office and the Executive Secretary within twenty-four hours;
- (5) shall assure that all operations of tank removal which are critical to safety and to the protection of the environment which includes removal of soil adjacent to the tank, disassembly of pipe, final removal of product and sludges from the tank, cleaning of the tank, purging or inerting of the tank, removal of the tank from the ground, and removal of the tank from the site shall be supervised by a certified person;
- (6) shall not proceed to close a regulated UST without an approved closure plan, except as outlined in Subsection R311-204-2(b);
- (7) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to any certificate application;
- (8) shall not participate in fraudulent, unethical, deceitful or dishonest activity with respect to performance of work for which certification is granted where the manner of the activity would increase the possibility of a release from an underground storage tank; and
- (9) shall not participate in any other regulated certification program activities without meeting all requirements of that certification program, except as outlined in Subsection R311-204-5(b).

R311-201-7. Denial of Certification and Appeal of Denial.

Any individual whose application or renewal application for certification or certification renewal is denied shall be provided with a written documentation by the Executive Secretary specifying the reason or reasons for denial. An applicant may appeal that determination to the Solid and Hazardous Waste Control Board using the procedures specified in Section 63G-4-102, et seq., and Rule R311-210.

R311-201-8. Inactivation of Certification.

If an applicant was certified based upon his employer's financial assurance, certification is contingent upon the applicant's continued employment by that employer. If the employer loses his financial assurance or the applicant leaves the employer, his certificate shall automatically be deemed inactive and he shall no longer be

certified for purposes of this Rule. Inactive certificates may be reactivated by submitting a supplemental application with new financial assurances and payment of any applicable fees. Reactivated certificates shall be effective for the remainder of their original term unless subsequently revoked or inactivated before the end of that term.

R311-201-9. Revocation of Certification.

Upon receipt of evidence that a certificate holder does not meet one or more of the eligibility requirements specified in Section R311-201-4 or does not meet one or more of the performance standards specified in Section R311-201-6, the individual's certification may be revoked by the Executive Secretary. Any appeal proceedings by the individual shall be conducted in accordance with the requirements of Section 63G-4-102, et seq., using informal procedures.

R311-201-10. Reciprocity.

If the Executive Secretary determines that another state's certification program is equivalent to the certification program provided in this rule, the applicant successfully passes the Utah certification examination, and payment of any fees associated with this rule are made, he may issue a Utah certificate. The certificate will be valid until the expiration date of the previous state's certificate or the expiration of the certification period described in Section R311-201-3(c), as appropriate, whichever is first.

R311-201-11. Work Performed by Licensed Engineers or Geologists.

(a) All work that qualifies as Professional Engineering or the Practice of Engineering, as defined in Section 58-22-102, shall be performed by or under the personal direction of a licensed Professional Engineer, or as qualifying under exemptions stated in Section 58-22-305. All documents and other work products submitted to the division for work that is performed under Section 58-22-102, shall be stamped and signed by an individual licensed under Section 58-22-301.

(b) All work that qualifies as the Practice of Geology Before the Public, as defined in Section 58-76-102, shall be performed by or under the personal direction of a licensed Professional Geologist, or as qualifying under exemptions stated in Section 58-76-304. All documents and other work products submitted to the division, for work that is performed under Section 58-76-102, shall be stamped and signed by an individual licensed under Section 58-76-301.

R311. Environmental Quality, Environmental Response and Remediation.**R311-202. Underground Storage Tank Technical Standards.****R311-202-1. Incorporation by Reference.**

40 CFR Part 280 in effect as of December 6, 1995, is hereby adopted and incorporated by reference.

R311. Environmental Quality, Environmental Response and Remediation.**R311-203. Underground Storage Tanks: Technical Standards.****R311-203-1. Definitions.**

Definitions are found in Rule R311-200.

R311-203-2. Notification.

- (a) The owner or operator of an underground storage tank shall notify the Executive Secretary whenever:
- (1) new USTs are brought into use;
 - (2) the owner or operator changes;
 - (3) changes are made to the tank or piping system;
 - (4) release detection, corrosion protection, or spill or overfill prevention systems are installed, changed or upgraded, and
 - (5) whenever an alternative fuel is stored in the tank.
- (b) All notifications shall be submitted on the current approved notification form.
- (1) Notifications submitted to meet the requirements of R311-203-2(a)(1) through (4) shall be submitted

within 30 days of the completion of the work or the change of ownership.

(2) Notifications submitted to meet the requirement of R311-203-2(a)(5) shall be submitted at least 10 days, or another time period approved by the Executive Secretary, prior to storing an alternative fuel in the tank.

(c) To satisfy the requirement of Subsection 19-6-407(1)(c) the certified installer shall:

(1) complete the appropriate section of the notification form to be submitted by the owner or operator, and ensure that the notification form is submitted by the owner or operator within 30 days of completion of the installation; or

(2) provide separate notification to the Executive Secretary within 60 days of the completion of the installation.

R311-203-3. New Installations, Permits.

(a) Certified UST installers shall notify the Executive Secretary at least 10 days, or another time period approved by the Executive Secretary, before commencing any of the following activities:

(1) the installation of a full UST system or tank only;

(2) the installation of underground product piping for one or more tanks at a facility, separate from the installation of one or more tanks at a facility;

(3) the internal lining of a previously-existing tank;

(4) the installation of a cathodic protection system on one or more previously-existing tanks at a facility where the structural integrity of the UST was required to be assessed, or where there is no documentation of a properly-working cathodic protection system on the UST within 10 years of the proposed upgrade;

(5) the installation of a bladder in a tank;

(6) any retro-fit, replacement, or installation that requires the cutting of a manway into the tank;

(7) the installation of a spill prevention or overfill prevention device;

(8) the installation of a leak detection monitoring system; and

(9) the installation of a containment sump or under-dispenser containment.

(b) The UST installation company shall submit to the Executive Secretary an UST installation permit fee of \$200 when any of the activities listed in R311-203-3(a)(1) through (6) is performed on an UST system that has not qualified for a certificate of compliance before the commencement of the work.

(c) The fees assessed under 19-6-411(2)(a)(i) shall be determined based on the number of full UST installations performed by the installation company in the 12 months previous to the fee due date. Installations for which the fee assessed under 19-6-411(2)(a)(ii) and R311-203-3(c) is charged shall count toward the total installations for the 12-month period.

(d) For the purposes of Subsections 19-6-411(2)(a)(ii), 19-6-407(1)(c), and R311-203-2(c), an installation shall be considered complete when:

(1) in the case of installation of a new UST system, tank only, or product piping only, the new installation first holds a regulated substance; or

(2) in the case of installation of the components listed in Subsections R311-203-3(a)(3) through (a)(6), the new installation is functional and the UST holds a regulated substance and is operational.

(e) If, before completion of an installation for which an UST installation permit fee is required, the owner or operator decides to install additional UST system components, the installer shall notify the Executive Secretary of the change. When additions are made, the UST installation permit fee shall not be increased unless the original UST installation permit fee would have been higher had the addition been considered at the time the original fee was determined.

(f) The number of UST installation companies performing work on a particular installation shall not be a factor in determining the UST installation permit fee for that installation. However, each installation company shall identify itself at the time the UST installation permit fee is paid.

(g) When a new UST system, tank only, product piping only, or new cathodic protection system is installed, the owner or operator shall submit to the Executive Secretary an as-built drawing, to scale, that meets the requirements of R311-200-1(b)(3).

R311-203-4. Underground Storage Tank Registration Fee.

(a) Registration fees shall be assessed by the Department against all tanks which are not permanently closed

for the entire fiscal year, and shall be billed per facility.

(b) Registration fees shall be due on July 1 of the fiscal year for which the assessment is made, or, for underground storage tanks brought into use after the beginning of the fiscal year, underground storage tank registration fees shall be due when the tanks are brought into use, as a requirement for receiving a certificate of compliance.

(c) The Executive Secretary may waive all or part of the penalty assessed under Subsection 19-6-408(5) if no fuel has been dispensed from the tank on or after July 1, 1991 and if the tank has been properly closed according to Sections R311-204 and R311-205, or in other circumstances as approved by the Executive Secretary.

(d) The Executive Secretary shall issue a certificate of registration to owners or operators for individual underground storage tanks at a facility if:

- (1) the tanks are in use or are temporarily closed according to 40 CFR Part 280 Subpart G; and,
- (2) the underground storage tank registration fee has been paid.

(e) Pursuant to 19-6-408(5)(c), all past due registration fees, late payment penalties and interest must be paid before the Executive Secretary may issue or re-issue a certificate of compliance regardless of whether there is a new owner or operator at the facility. However, the Executive Secretary may decline active collection of past due registration fees, late payment penalties and interest if a certificate of compliance is not issued and the new owner or new operator properly closes the underground storage tanks within one year of becoming the new owner or operator of the facility.

R311-203-5. UST Testing Requirements.

(a) Tank tightness testing. The testing method must be able to test the UST system at the maximum level that could contain regulated substances. Tanks with overfill prevention devices that prevent product from entering the upper portion of the tank may be tested at the maximum level allowed by the overfill device.

(b) Automatic line leak detector testing. Line leak detectors shall be tested annually for functionality according to 40 CFR 280.44(a) and R311-200-1(b)(4). An equivalent test may be approved by the Executive Secretary. The test shall simulate a leak and provide a determination based on the test whether the leak detector functions properly and meets the requirements of 40 CFR 280.44(a). If a sump sensor is used as an automatic line leak detector, the sensor shall be located as close as is practical to the lowest portion of the sump.

(c) Containment sump testing. When a sump sensor is used as a leak detector, the secondary containment sump shall be tested for tightness annually according to the manufacturer's guidelines or standards, or by another method approved by the Executive Secretary.

(d) Cathodic protection testing. Cathodic protection tests shall meet the inspection criteria outlined in 40 CFR 280.31(b)(2), or other criteria approved by the Executive Secretary. The tester who performs the test shall provide the following information: location of at least three test points per tank, test results in volts or millivolts, pass/fail determination for each tank, line, flex connector, or other UST system component tested, the criteria by which the pass/fail determination is made, and a site plat showing locations of test points. A re-test of any cathodic protection system is required within six months of any below-grade work that may harm the integrity of the system.

(e) UST testers performing tank and line tightness testing shall include the following as part of the test report: pass/fail determination for each tank or line tested, the measured leak rate, the test duration, the product level for tank tests, the pressure used for pressure tests, the type of test, and the test equipment used.

R311-203-6. Secondary Containment and Under-dispenser Containment.

(a) Secondary containment for tanks and piping.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all tanks and product piping that are installed as part of an underground storage tank system after October 1, 2008 shall have secondary containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The secondary containment installed under Subsection (a) shall meet the requirements of 40 CFR 280.42(b), and shall be monitored monthly for releases from the tank and piping. Monthly monitoring shall meet the requirements of 40 CFR 280.43(g).

(3) Containment sumps for piping that is installed under Subsection (a) shall be required:

- (A) at the submersible pump or other location where the piping connects to the tank;

- (B) where the piping connects to a dispenser, or otherwise goes above-ground; and
- (C) where double-walled piping that is required under Subsection (a) connects with existing piping.
- (4) Containment sumps for piping that is installed under Subsection (a) shall:

- (A) contain submersible pumps, check valves, unburied risers, flexible connectors, and other transitional components that connect the piping to the tank, dispenser, or existing piping; and
- (B) meet the requirements of Subsections (b)(2)(A) through (C).

(5) In the case of a replacement of tank or piping, only the portion of the UST system being replaced shall be subject to the requirements of Subsection (a). If less than 100 percent of the piping from a tank to a dispenser is replaced, the requirements of Subsection (a) shall apply to all new product piping that is installed. The closure requirements of R311-205 shall apply to all product piping that is taken out of service. When new piping is connected to existing piping that is not taken out of service, the connection between the new and existing piping shall be secondarily contained, and shall be monitored for releases according to 40 CFR 280.43(g).

(6) The requirements of Subsection (a) shall not apply to:

- (A) piping that meets the requirements for "safe suction" piping in 40 CFR 280.41(b)(2)(i) through (v), or
- (B) piping that connects two or more tanks to create a siphon system.

(7) The requirements of Subsection (a) shall apply to emergency generator USTs installed after October 1, 2008.

(b) Under-dispenser containment.

(1) To meet the requirements of Section 42 USC 6991b(i) of the Solid Waste Disposal Act, all new motor fuel dispenser systems installed after October 1, 2008, and connected to an underground storage tank, shall have under-dispenser containment if the installation is located 1000 feet or less from an existing community water system or an existing potable drinking water well.

(2) The under-dispenser containment shall:

- (A) be liquid-tight on its sides, bottom, and at all penetrations;
- (B) be compatible with the substance conveyed by the piping; and
- (C) allow for visual inspection and access to the components in the containment system, or shall be continuously monitored for the presence of liquids.

(3) If an existing dispenser is replaced, the requirements of Subsection (b) shall apply to the new dispenser if any equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment includes unburied flexible connectors, risers, and other transitional components that are beneath the dispenser and connect the dispenser to the product piping.

(c) The requirements of Subsections (a) and (b) shall not apply if the installation is located more than 1000 feet from an existing community water system or an existing potable drinking water well.

(1) The UST owner or operator shall provide to the Executive Secretary documentation to show that the requirements of Subsections (a) and (b) do not apply to the installation. The documentation shall be provided at least 60 days before the beginning of the installation, and shall include:

- (A) a detailed to-scale map of the proposed installation that demonstrates that no part of the installation is within 1000 feet of any community water system, potable drinking water well, or any well the owner or operator plans to install at the facility, and

- (B) a certified statement by the owner or operator explaining who researched the existence of a community water system or potable drinking water well, how the research was conducted, and how the proposed installation qualifies for an exemption from the requirements of Subsections (a) and (b).

(d) To determine whether the requirements of Subsections (a) and (b) apply, the distance from the UST installation to an existing community water system or existing potable drinking water well shall be measured from the closest part of the new underground tank, piping, or motor fuel dispenser system to:

(1) the closest part of the nearest community water system, including:

- (A) the location of the wellheads for groundwater and/or the location of the intake points for surface water;
- (B) water lines, processing tanks, and water storage tanks; and
- (C) water distribution/service lines under the control of the community water system operator, or

(2) the wellhead of the nearest existing potable drinking water well.

(e) If a new underground storage tank facility is installed, and is not within 1000 feet of an existing community water system or an existing potable drinking water well, the requirements of Subsections (a) and (b)

apply if the owner or operator installs a potable drinking water well at the facility that is within 1000 feet of the underground tanks, piping, or motor fuel dispenser system, regardless of the sequence of installation of the UST system, dispenser system, and well.

R311. Environmental Quality, Environmental Response and Remediation.**R311-204. Underground Storage Tanks: Closure and Remediation.****R311-204-1. Definitions.**

Definitions are found in Section R311-200.

R311-204-2. Underground Storage Tank Closure Plan.

(a) Owners or operators of all underground storage tanks or any portion thereof which are to be permanently closed or undergo change-in-service shall submit a permanent closure plan to the Executive Secretary of the Utah Solid and Hazardous Waste Control Board. The permanent closure plan shall be submitted by the owner or operator as fulfillment of the 30-day permanent closure notification requirement in accordance with 40 CFR 280 Subpart G.

(b) If a tank is to be removed as part of corrective action as allowed by 40 CFR 280 Subpart G, the owner or operator is not required to submit a closure plan, but must meet the requirements of 40 CFR 280.66(d) before any removal activity takes place, and must submit a corrective action plan as required by 40 CFR 280.66.

(c) The closure plan shall address applicable issues involved with permanent closure or change-in-service, including: tank disposal handling and final disposal site, product removal, sludge disposal, vapor purging or inerting, removing or securing and capping product piping, removing vent lines or securing vent lines open, tank cleaning, environmental sampling, contaminated soil and water management, in-place tank disposal or tank removal, transportation of tank, permanent disposal and other disposal activities which may affect human health, human safety or the environment.

(d) No underground storage tank shall be permanently closed or undergo change-in-service prior to the owner or operator receiving final approval of the submitted permanent tank closure plan by the Executive Secretary, except as outlined in Subsection R311-204-2(b). Closure plan approval shall be effective for a period of one year. If the underground storage tank has not been permanently closed or undergone change in service as proposed within one year following approval from the Executive Secretary, the plan must be re-submitted for approval, unless otherwise approved by the Executive Secretary.

(e) Permanent closure plans shall be prepared using the current approved form according to guidance furnished by the Executive Secretary.

(f) The owner or operator shall ensure that the approved permanent closure plan and approval letter are on site during all closure activities.

(g) Any deviation from or modification to an approved closure plan must be approved by the Executive Secretary prior to implementation, and must be submitted in writing to the Executive Secretary.

(h) The Executive Secretary shall be notified at least 72 hours prior to the start of closure activities.

R311-204-3. Disposal.

(a) Tank labeling. All tanks which are permanently closed by removal must be labeled immediately after being removed from the ground with the facility identification number and information about previously contained substances.

(1) Removed tanks which have contained motor fuels or other regulated products, except leaded motor fuels, must be labeled with letters at least two inches high which read:

"CONTAINED (UNLEADED GASOLINE, DIESEL OR OTHER AS APPROPRIATE), FLAMMABLE.
REMOVED: MONTH/DAY/YEAR."

(2) Removed tanks which have contained leaded motor fuel, or whose service history is unknown, must be labeled with letters at least two inches high which read:

"CONTAINED LEADED GASOLINE. HEATING RELEASES LEAD VAPORS, FLAMMABLE.
REMOVED: MONTH/DAY/YEAR."

(b) Removed tanks shall be expeditiously disposed of as regulated underground storage tanks by the

following methods:

- (1) The tank may be cut up after the interior atmosphere is first purged or inerted.
- (2) The tank may be crushed after the interior atmosphere is first purged or inerted.
- (3) The tank may not be used to store food or liquid intended for human or animal consumption.
- (4) The tank may be disposed of in a manner approved by the Executive Secretary.
- (c) Tank transportation. Used tanks which are transported on roads of the State of Utah must be cleaned inside the tank prior to transportation, and be free of all product, free of all vapors, or rendered inert during transport.

R311-204-4. Closure Notice.

(a) Owners or operators of underground storage tanks which were permanently closed or had a change-in-service prior to December 22, 1988 shall submit a completed closure notice, unless the tanks were properly closed on or before January 1, 1974.

(b) Owners or operators of underground storage tanks which are permanently closed or have a change-in-service after December 22, 1988 shall submit a completed closure notice form and the following information within 90 days after tank closure:

(1) All results from the closure site assessment conducted in accordance with Section R311-205, including analytical laboratory results and chain of custody forms.

(2) Effective January 1, 1993, a site plat displaying depths and distances such that the sample locations can be determined solely from the site plat. The site plat shall include: scale, north arrow, streets, property boundaries, building structures, utilities, underground storage tank system location, location of any contamination observed or suspected during sampling, location and volume of any stockpiled soil, the extent of the excavation zone, and any other relevant features. All sample identification numbers used on the site plat shall correspond to the chain of custody form and the lab analysis report.

(c) Owners and operators of underground storage tanks that are temporarily closed for a period greater than three months shall submit a completed temporary closure notice within 120 days after the beginning of the temporary closure.

(d) All closure notices for permanent and temporary closure shall be submitted on the current approved forms.

R311-204-5. Remediation.

(a) Any UST release management, abatement, investigation, corrective action or evaluation activities performed for a fee, or in connection with services for which a fee is charged, must be performed under the supervision of a Certified UST Consultant, except as outlined in sections 19-6-402(6)(b)(i), 19-6-402(6)(b)(ii), and R311-204-5(b).

(b) At the time of UST closure, a certified UST Remover may overexcavate and properly dispose of up to 50 cubic yards of contaminated soil per facility, or another volume approved by the Executive Secretary, in addition to the minimum amount required for closure of the UST. This overexcavation may be performed without the supervision of a certified UST Consultant. Appropriate confirmation samples must be taken by a certified groundwater and soil sampler in accordance with R311-201 for the purpose of determining the extent and degree of contamination.

R311. Environmental Quality, Environmental Response and Remediation.

R311-205. Underground Storage Tanks: Site Assessment Protocol.

R311-205-1. Definitions.

Definitions are found in Rule R311-200.

R311-205-2. Site Assessment Protocol.

(a) General Requirements.

(1) When a site assessment or site check is required, pursuant to 40 CFR 280 or Subsection 19-6-428(3), owners or operators shall perform or commission to be performed a site assessment or a site check according to the protocol outlined in Rule R311-205 or equivalent, as approved by the Executive Secretary. Additional

environmental samples must be collected when contamination is found, suspected, or as requested by the Executive Secretary.

(2) Groundwater samples shall be collected in accordance with the "EPA RCRA Ground-water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1), 1986 or as determined by the Executive Secretary. Surface water samples shall be collected in accordance with protocol established in the "EPA Compendium of ERT Surface Water and Sediment Sampling Procedures" January 1991, or as determined by the Executive Secretary. Soil samples shall be collected in accordance with the "EPA Description and Sampling of Contaminated Soils, A Field Pocket Guide", November 1991 or as determined by the Executive Secretary.

(3) Owners and operators must document and report to the Executive Secretary sample types, sample locations and depths, field and sampling measurement methods, the nature of the stored substance, the type of backfill and native soil, the depth to groundwater, and other factors appropriate for identifying the source area and the degree and extent of subsurface soil and groundwater contamination.

(4) The owner or operator shall report the discovery of any release or suspected release to the Executive Secretary within twenty-four hours. Owners or operators shall begin release investigation and confirmation steps in accordance with 40 CFR 280, Subpart E upon suspecting a release. Owners or operators shall begin release response and corrective action in accordance with 40 CFR 280, Subpart F upon confirming a release.

(5) All environmental samples shall be collected by a certified groundwater and soil sampler who meets the requirements of Rule R311-201. The certified groundwater and soil sampler shall record the depth below grade and location of each sample collected to within one foot.

(6) All environmental samples shall be analyzed within the time frame allowed, in accordance with Table 4.1 of the "EPA RCRA Ground-water Monitoring Technical Enforcement Guidance Document" (OSWER Directive 9950.1), by a Utah Certified Environmental Laboratory approved by the Executive Secretary. Soil samples must be corrected for moisture, if necessary, with percent moisture reported to accurately represent the level of contamination.

(7) Environmental samples for UST permanent closure or change in service shall be collected according to the protocol outlined in Subsection R311-205-2(b), after the UST system is emptied and cleaned and after the closure plan has been approved.

(8) Environmental confirmation samples are required following overexcavation of soils. Confirmation samples shall be taken at locations and depths sufficient to detect the presence, extent and degree of a release from any portion of the UST in accordance with 40 CFR 280, Subparts E, F and G. Additional confirmation samples may be required as determined by the Executive Secretary.

(9) Upon confirming a release, a site assessment report, an updated site plat, analytical laboratory results, chain of custody forms, and all other applicable documentation required by 40 CFR 280, Subparts E and F, following any abatement, investigation or assessment, monitoring, remediation or corrective action activities, shall be submitted to the Executive Secretary within the specified time frames as outlined in compliance schedules.

(10) When conducting environmental sampling to satisfy the requirements of 40 CFR 280, subparts E and F, soil classification samples to determine native soil type shall be collected at locations and depths as outlined in compliance schedules, or as determined by the Executive Secretary. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification, or a field description from a qualified individual as determined by the Executive Secretary, may be used to satisfy requirements of determining native soil type.

(11) Other types of environmental or quality assurance samples may be required as determined by the Executive Secretary.

(b) Site Assessment Protocol for UST Closure.

(1) The appropriate number of environmental samples, as described in Subsection R311-205-2(b)(4) shall be collected in native soils, below the backfill material, and as close as technically feasible to the tank, piping or dispenser island. Any other samples required by Subsection R311-205-2(a) must also be collected. Soil samples shall be collected from a depth of zero to two feet below the backfill and native soil interface. If groundwater is contacted in the process of collecting the soil samples, the soil samples required by Subsection R311-205-2(b)(4) shall be collected from the unsaturated zone immediately above the capillary fringe. Groundwater samples shall be collected using proper surface water collection techniques, from a properly installed groundwater monitoring well, or as determined by the Executive Secretary. All environmental samples shall be analyzed using the appropriate analytical methods outlined in Subsection R311-205-2(d).

(2) One soil classification sample to determine native soil type shall be collected at the same depth as indicated for environmental samples, at each tank and product piping area. For all dispenser islands, only one representative sample to determine native soil type is required. Techniques of the Unified Soil Classification such as a sieve analysis or laboratory classification shall be used to satisfy requirements of determining native soil type when taking samples for UST closure.

(3) For purposes of complying with Rule R311-205, for tanks or piping to be removed, closed in-place or that undergo a change in service, a tank or product piping area is considered to be an excavation zone or equivalent volume of material containing one, or more than one immediately adjacent, UST or piping run.

(4) Environmental Sampling Protocol for UST closures:

(A) For a tank area containing one UST, one soil sample shall be collected at each end of the tank. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank.

(B) For a tank area containing more than one UST, one soil sample shall be collected from each corner of the tank area. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each end of the tank area.

(C) Product piping samples shall be collected from each product piping area, at locations where leaking is most likely to occur, such as joints, connections and fittings, at intervals which do not allow more than 50 linear feet of piping in a single piping area to go unsampled. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each piping area where groundwater was encountered.

(D) For dispenser islands, environmental samples shall be collected from the middle of each dispenser island. Additional environmental samples shall be collected at intervals which do not allow more than 25 linear feet of dispenser island piping to go unsampled. If groundwater is contacted during the process of collecting soil samples, a minimum of one groundwater and one soil sample shall be collected from each dispenser island where groundwater was encountered.

(c) Site Check Requirements for Re-applying to Participate in the Petroleum Storage Tank Trust Fund Program.

(1) Owners or operators wishing to re-apply for participation in the Petroleum Storage Tank Trust Fund Program following a period of lapse or non-participation shall perform a tank tightness test and site check pursuant to Subsection 19-6-428(3)(a). The tank tightness test and site check shall be consistent with requirements for testing and site assessment as defined under 40 CFR 280, Subparts D and E.

(2) The owner or operator shall develop or commission to have developed a site check plan outlining the intended sampling program. The Executive Secretary shall review and approve the site check plan prior to its implementation. The site check shall meet the sampling requirements for USTs, dispensers and piping as defined in Subsection R311-205-2(b), or as determined by the Executive Secretary on a site-specific basis. Additional sampling may be required by the Executive Secretary based on review of the proposed site check plan and site specific conditions.

(d) Laboratory Analyses of Environmental Samples.

(1) Environmental samples which have been collected to determine levels of contamination from underground storage tanks shall be analyzed using appropriate laboratory analytical methods as referenced in the "Analytical Methods for Environmental Sampling at Underground Storage Tank Sites in Utah (July 2004)", or as determined by the Executive Secretary.

(2) Environmental samples which have been collected to determine levels of contamination by gasoline shall be analyzed for total petroleum hydrocarbons (purgeable TPH as gasoline range organics $C_6 - C_{10}$), benzene, toluene, ethylbenzene, xylenes and naphthalene (BTEXN), and for methyl tertiary butyl ether (MTBE).

(3) Environmental samples which have been collected to determine levels of contamination by diesel fuel shall be analyzed for total petroleum hydrocarbons (extractable TPH as diesel range organics $C_{10} - C_{28}$), benzene, toluene, ethylbenzene, xylenes and naphthalene (BTEXN).

(4) Environmental samples which have been collected to determine levels of contamination by used oil shall be analyzed for oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH); and for benzene, toluene, ethylbenzene, xylenes, naphthalene (BTEXN); methyl tertiary butyl ether (MTBE); and halogenated volatile organic compounds (VOX).

(5) Environmental samples which have been collected to determine levels of contamination by new oil shall be analyzed for oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH).

(6) Environmental samples which have been collected to determine levels of contamination from underground storage tanks which contain substances other than or in addition to petroleum shall be analyzed for appropriate constituents as determined by the Executive Secretary.

(7) Environmental samples which have been collected to determine levels of contamination for an unknown petroleum product type shall be analyzed for total petroleum hydrocarbons (purgeable TPH as gasoline range organics $C_6 - C_{10}$); total petroleum hydrocarbons (extractable TPH as diesel range organics $C_{10} - C_{28}$); oil and grease (O and G) or total recoverable petroleum hydrocarbons (TRPH); benzene, toluene, ethylbenzene, xylenes and naphthalene (BTEXN) and methyl tertiary butyl ether (MTBE); and for halogenated volatile organic compounds (VOX).

(8) All original laboratory sample results must be returned to the certified groundwater and soil sampler or certified UST consultant to verify all chain of custody protocols, including holding times and analytical procedures, were properly followed. Environmental samples shall be collected and transported under chain of custody according to EPA methods as approved by the Executive Secretary.

(9) Reporting limits used by laboratories analyzing environmental samples taken under this rule shall be below initial screening levels for the contaminated media under study. Environmental samples shall be analyzed with the least possible dilution to ensure reporting limits are below initial screening levels to the extent possible. If more than one determinative analysis is performed on any given environmental sample, the final dilution factor used and the reporting limit must be reported by the laboratory. As an alternative to diluting environmental samples, the laboratory shall consider using appropriate analytical cleanup methods and describe which analytical cleanup methods were used to eliminate or minimize matrix interference. Any analytical cleanup method used must not eliminate the contaminant of concern or target analyte.

R311. Environmental Quality, Environmental Response and Remediation.

R311-206. Underground Storage Tanks: Financial Assurance Mechanisms.

R311-206-1. Definitions.

Definitions are found in Rule R311-200.

R311-206-2. Declaration of Financial Assurance Mechanism.

(a) To demonstrate financial assurance, as required by 40 CFR 280, subpart H, owners or operators of petroleum storage tanks shall:

- (1) meet all requirements for participation in the Environmental Assurance Program, or
- (2) demonstrate financial assurance by an allowable method specified in 40 CFR 280, subpart H.

(b) Owners or operators shall declare whether they will participate in the Environmental Assurance Program under Section 19-6-410.5, or show financial assurance by another method.

(c) For the purposes of Subsection 19-6-412(6), all tanks at a facility shall be covered by the same financial assurance mechanism, and shall be considered to be in one area, unless the Executive Secretary determines there is sufficient information so that releases from different tanks at the facility could be accurately differentiated.

R311-206-3. Requirements for Issuance of Certificates of Compliance.

(a) The Executive Secretary shall issue a certificate of compliance to an owner or operator for individual petroleum storage tanks at a facility if:

- (1) the owner or operator has a certificate of registration;
- (2) the tank is substantially in compliance with all state and federal statutes, rules and regulations;
- (3) the UST test, conducted within 6 months before the tank was registered or within 60 days after the date the tank was registered, indicates that each individual UST is not leaking;
- (4) the owner or operator has submitted a letter to the Executive Secretary stating that based on customary business inventory practices standards there has been no release from the tank;
- (5) the owner or operator has submitted a completed application according to a form provided and approved by the Executive Secretary, and has declared the financial assurance mechanism that will be used;

- (6) the owner or operator has met all requirements for the financial assurance mechanism chosen, including payment of all applicable fees; and
- (7) the owner or operator has submitted an as-built drawing that meets the requirements of R311-200-1(b)(3).

R311-206-4. Requirements for Environmental Assurance Program participants.

(a) To meet the requirements of Subsections 19-6-411(1)(a)(ii) and 19-6-411(1)(b)(ii) the owner or operator shall submit:

(1) A letter to the Executive Secretary stating that the facility is not engaged in petroleum production, refining, or marketing, and

(2) Evidence, each fiscal year, of average annual throughput less than 10,000 gallons per month based on current inventory records.

(b) In accordance with Subsection 19-6-411(1)(c), the annual facility throughput rate, if reported, shall be reported to the Executive Secretary as a specific number of gallons, based on the throughput for the previous calendar year.

(c) In accordance with Subsection 19-6-411(1)(d), when a petroleum storage tank is initially registered with the Executive Secretary, any Petroleum Storage Tank fee for that tank for the current fiscal year shall be due when the tank is brought into use, as a requirement for receiving a Certificate of Compliance.

(d) In accordance with Subsection 19-6-411(6), the Executive Secretary may waive all or part of the fees required to be paid on or before May 5, 1997 under Section 19-6-411 if no fuel has been dispensed from the tank on or after July 1, 1991, and if the tank has been properly closed according to Rules R311-204 and R311-205, or in other circumstances as approved by the Executive Secretary.

(e) In accordance with Subsection 19-6-411(2)(a)(i), if an installation company receives its annual permit after the beginning of the fiscal year, the annual fee must be paid for the entire year.

(f) Auditing of UST facility throughput records for fiscal year 1998.

(1) Owners and operators shall retain for seven years the monthly tank throughput records of the facility for the months of July 1997 through June 1998. Tank throughput records shall include all financial and product documentation for receipts, dispositions and inventories.

(2) The executive secretary may audit or order an audit, by an independent auditor, of records which support the amount of throughput, for each tank at a participant's facility.

(A) Records shall be made available at the Department for inspection within 30 calendar days after receiving notice from the Executive Secretary.

(B) Audits may be determined by random selection or for particular reasons, including suspicion or discovery of inaccuracies in throughput reports, aggregating throughput reports, having a release, or filing a claim.

(C) Auditing tank throughput may be accomplished by any method approved by the Executive Secretary.

(D) All costs of an independent audit shall be paid by the owner or operator.

(g) Owners or operators eligible for coverage by the Fund shall demonstrate financial assurance for the difference between coverage provided by the Fund and coverage amounts required by 40 CFR 280 Subpart H. If the owner or operator chooses self insurance as the mechanism for demonstrating financial assurance for the difference, the owner or operator must document a tangible net worth of \$10,000 upon request and to the satisfaction of the Executive Secretary. An owner or operator may also select and document another mechanism specified in 40 CFR 280.94 to demonstrate financial assurance for the difference. The processing fee requirement referenced in Subsection R311-206-5(b) is not applicable because the administrative cost is covered by the PST fund fee. However, the Executive Secretary may require the owner or operator to submit an independent audit to demonstrate net worth for self insurance. The owner or operator shall bear the expense for the audit. The criteria for an audit are the same as set forth in Subsection R311-206-4(f)(2).

R311-206-5. Requirements for Owners and Operators Demonstrating Financial Assurance by Other Methods.

(a) Owners and operators who elect to utilize an alternate form of financial assurance shall use one or a combination of mechanisms specified in 40 CFR 280.94. Owners and operators shall submit to the Executive Secretary the documents required by 40 CFR 280.111 to be kept and maintained for the mechanism used.

(1) Formats, calculations, letters, reporting, and record keeping shall be done in accordance with each applicable financial assurance mechanism specified in 40 CFR 280 subpart H.

(2) If the financial assurance documentation submitted to the Executive Secretary is not in accordance with 40 CFR 280 subpart H, it shall be rejected and shall be invalid.

(b) The processing fee established in Subsection 19-6-408(2)(a) for each new or changed financial assurance document submitted for approval shall be included with the financial assurance document and shall be payable to the Department. Processing fees for subsequent yearly review of a financial assurance document shall be due on July 1 annually.

(1) Pursuant to 40 CFR 280.97, if the financial assurance mechanism is an insurance policy, the insurer is liable for payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, with right of reimbursement by the insured for such payment made by the insurer. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 40 CFR 280.95-280.107. A showing of financial assurance for the deductible, if such a showing is made, shall be treated as a separate financial assurance mechanism subject to the processing fee requirement referenced in Subsection R311-206-5(b) above.

(2) If an owner or operator desires to make any material change to the financial assurance document, the change shall be approved by the Executive Secretary, and an additional processing fee shall be paid in circumstances as determined by the Executive Secretary.

(c) Evidence of a current and approved financial assurance mechanism shall be reported to the Executive Secretary as follows:

(1) For State fiscal year 1998 evidence of financial assurance for all mechanisms shall be due to the Executive Secretary by June 15, 1997.

(2) Thereafter, proof of financial assurance shall be reported to the Executive Secretary and shall include:

(A) Owners and operators using the financial test of self insurance shall submit the "Letter from Chief Financial Officer" to the Executive Secretary within the maximum 120 day period specified in 40 CFR 280.95.

(B) Owners and Operators using insurance and risk retention group coverage for financial assurance shall submit the coverage policy in its entirety, with the current Certificate of Insurance or Endorsement specified in 40 CFR 280.97(b), to the Executive Secretary within 30 days of acceptance of such policy by the insurer or risk retention group.

(i) If the insurance policy or risk retention group coverage is cancelled, the insurer or risk retention group shall provide written notice of cancellation or other termination of coverage required by 40 CFR 280.97(b)(1)2.d. and 40 CFR 280.97(b)(2)2.d. to the Executive Secretary as well as the insured.

(ii) The insurer shall have a rating of A- or greater by A.M. Best Co.

(C) Owners and operators using an irrevocable letter of credit shall submit proof of the letter of credit, standby trust fund, and formal certification of acknowledgement to the Executive Secretary within 30 days of issuance from the issuing institution.

(D) Owners and operators using a fully funded trust fund for financial assurance shall submit proof of the trust fund and formal certification of acknowledgement to the Executive Secretary within 30 days after implementation of the trust fund.

(E) Owners and operators using a guarantee for financial assurance shall submit the Guarantee document, standby trust fund, and certification of acknowledgement to the Executive Secretary within 30 days of issuance. The owner or operator shall also submit the guarantor's letter from chief financial officer within the 120-day period specified in 40 CFR 280.95.

(F) Owners and operators using a surety bond for financial assurance shall submit the surety bond document, standby trust fund, and certification of acknowledgement to the Executive Secretary within 30 days of issuance.

(G) Guarantees and surety bonds may be used as financial assurance mechanisms in Utah only if the requirement of 40 CFR Part 280.94(b) is met.

(H) Owners and operators using one of the local government methods specified in 40 CFR 280.104 through 107 shall submit the letter from chief financial officer and associated documents to the Executive Secretary within 120 days of the end of the owner/operator's or guarantor's fiscal year.

(d) The Executive Secretary may require reports of financial condition or any other information relative to

justification of the financial assurance mechanism from the owner or operator at any time. Information requested shall be reported to the Executive Secretary within 30 calendar days after receiving the request.

(1) Owners and operators shall maintain evidence of all financial assurance mechanisms as specified in 40 CFR 280.111.

(2) Owners and operators shall keep records of all financial assurance mechanisms for a period of three years.

(3) The Executive Secretary may audit or order an audit of records supporting the financial assurance mechanism at any time.

(A) Audits may be determined by random selection or for specific reasons, including the occurrence of a release or suspected release, deficiencies in complying with regulations or orders, or the suspicion or discovery of inaccuracies.

(B) Auditing of financial assurance methods may be accomplished by any method approved by the Executive Secretary.

(e) Any and all costs of securing a selected financial assurance mechanism and generating and providing the necessary reporting evidence of an assurance mechanism to the Executive Secretary shall be the sole responsibility of the owner or operator.

(f) Processing of the alternate financial assurance mechanism documents may be accomplished utilizing any method approved by the Executive Secretary.

R311-206-6. Voluntary Admission of Eligible Exempt Underground Storage Tanks and above-ground storage tanks to the Environmental Assurance Program.

(a) Owners or operators of eligible exempt underground storage tanks specified in Subsection 19-6-415(1)(a) may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(1) and Subsection R311-206-3(a);

(2) properly performing release detection according to the requirements of 40 CFR Part 280 Subpart D; and

(3) meeting the upgrade requirements in 40 CFR 280.21 or the new tank requirements in 40 CFR 280.20, as applicable.

(b) Owners or operators of above-ground storage tanks may voluntarily participate in the Environmental Assurance Program by:

(1) meeting the requirements of Subsection 19-6-415(2) and Subsection R311-206-3(a);

(2) meeting applicable requirements of the 2000 International Fire Code, Chapters 22 and 34, published by the International Code Council, Inc.;

(3) performing an annual line tightness test of all underground product piping, or documenting monthly monitoring of sensor-equipped double-walled underground product piping; and

(4) performing a tightness test of all above-ground tanks every five years, using a tightness test method capable of properly testing the tank.

R311-206-7. Revocation and Lapsing of Certificates.

(a) The Executive Secretary shall revoke a certificate of compliance or registration if he determines that the owner or operator has willfully submitted a fraudulent application or is not in compliance with any requirement pertaining to the certificate.

(b) A petroleum storage tank owner or operator who has had a certificate of compliance revoked under Section 19-6-414 or Subsection R311-206-7(a) may have the certificate reissued by the Executive Secretary after the owner or operator demonstrates compliance with Subsection 19-6-412(2), Subsection 19-6-428(3), and Section R311-206-3.

(c) A petroleum storage tank owner or operator who has had a certificate of compliance lapse under Subsection 19-6-408(5)(c) may have the certificate reissued by the Executive Secretary after the owner or operator demonstrates compliance with Subsection 19-6-412(2) and Section R311-206-3.

(d) A petroleum storage tank owner or operator who has had eligibility to receive payments for claims against the fund lapse under Section 19-6-411(3)(c)(ii) shall meet the requirements of Subsection 19-6-428(3) and pay all fees, interest, and penalties due to reinstate eligibility.

(e) Upon permanent closure of a tank which is covered by the Fund, the eligibility to make a claim against

the Fund shall terminate as specified in Section R311-207-2. Permanently closed tanks are not eligible to be reissued a certificate of compliance.

(f) In accordance with Section 19-6-414, the Executive Secretary may revoke a certificate of compliance for the owner's or operator's failure to comply with 40 CFR 280, which requires release reporting, abatement, investigation, corrective action, or other measures to bring the release site under control.

R311-206-8. Proof of Certification.

(a) In accordance with Subsection 19-6-411(7), a tag or other means of identification shall be issued to each petroleum storage tank or underground storage tank which has demonstrated current compliance with Section 19-6-412 and Section R311-206-3 or Section R311-206-6. The tag or other means of identification shall be displayed for view of the person delivering or placing petroleum product into an underground storage tank for which the tag was issued.

(b) A tank shall not be issued a tag or other means of identification if the owner or operator has not satisfied the requirements of Section 19-6-412. An owner or operator shall not allow a tag to be displayed on a tank for which the Certificate of Compliance has been revoked or has lapsed, or on a tank for which the eligibility to receive payment for claims against the fund has lapsed unless the owner or operator has demonstrated compliance with financial assurance requirements.

R311-206-9. Removing Participating Tanks from the Environmental Assurance Program.

(a) At any time after May 1, 1997, owners and operators of petroleum storage tanks who have voluntarily elected to participate in the Environmental Assurance Program may cease participation in the program and be exempted from the requirements described in Section R311-206-4 by:

(1) permanently closing tanks as outlined in 40 CFR 280, subpart G, Rule R311-204, and Rule R311-205, or

(2) meeting the following requirements:

(i) demonstrating compliance with Section R311-206-5, and

(ii) notifying the Executive Secretary at least 60 days before the date of cessation in the program, and specifying the date of cessation.

(b) The fund will not give pro-rata refunds.

(c) For tanks being removed voluntarily from the program, the date of cessation in the program shall be the date on which coverage under the program ends. Subsequent claims for payments from the fund must be made in accordance with Section 19-6-424 and Section R311-207-2.

R311-206-10. Participation in the Environmental Assurance Program After a Period of Voluntary Non-participation.

(a) Owners and operators who choose not to participate in the Environmental Assurance Program shall, before any subsequent participation in the program, meet the following requirements:

(1) notify the Executive Secretary of the intent to participate in the program;

(2) comply with the requirements of Subsection 19-6-428(3), and

(3) meet the requirements of Subsection R311-206-3(a) to qualify for a new certificate of compliance.

(b) Effective January 1, 2007, and until December 31, 2007, the Executive Secretary may determine that there is reasonable cause to believe that no petroleum has been released if the owner or operator, for each UST to participate in the program, meets the following requirements at the time the owner or operator applies for participation:

(1) The last two compliance inspections verify significant operational compliance, and verify that no release has occurred. Significant operational compliance status shall be determined using the EPA Release Prevention Compliance Measures Matrix and Release Detection Compliance Measures Matrix, both dated September 30, 2003 and incorporated herein by reference. The matrices contain leak prevention and leak detection criteria to be used by inspectors in determining compliance status of underground storage tanks.

(2) The owner or operator documents compliance with all release prevention and release detection requirements that are required for the time period since the last compliance inspection, and the records submitted do not give reason to suspect a release has occurred. The owner or operator shall submit:

- (i) tank and piping leak detection records, or a tank and line tightness test performed within the last six months;
- (ii) the most recent simulated leak test for all automatic line leak detectors;
- (iii) cathodic protection tests, if applicable, and
- (iv) internal lining inspections, if applicable.
- (c) Effective January 1, 2008, the Executive Secretary may determine that reasonable cause exists if:
 - (1) the owner or operator meets the requirements of Subsections (b)(1) and (b)(2) above, and
 - (2) the period of non-participation in the Program is less than six months, or the UST is less than ten years old.

R311. Environmental Quality, Environmental Response and Remediation.**R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks.****R311-207-1. Definitions.**

Definitions are found in Section R311-200.

R311-207-2. Notification of Intent and Eligibility to Claim Against the Petroleum Storage Tank Trust Fund.

(a) Any responsible party who is making any claim against the Petroleum Storage Tank Trust Fund shall have previously satisfied the requirements of Section R311-206-3(a), have a valid certificate of compliance at the time of product release by the covered UST; and meet the requirements of 19-6-424.

(b) Except as provided in Section R311-207-2(c), a responsible party eligible to receive payments in accordance with Section 19-6-419 shall submit to the Executive Secretary a written Eligibility Application to make a claim against the Petroleum Storage Tank Trust Fund,

- (1) during a period for which that tank was covered by the fund; or
- (2) within one year after that fund-covered tank is closed; or
- (3) within six months after the end of the period during which the tank was covered by the fund; or
- (4) before the responsible party expends any amount over their share in eligible costs, whichever is sooner.

(c) For eligible releases that are discovered and reported to the Executive Secretary after July 1, 1994, the responsible party is required to expend the first \$10,000 in eligible costs as determined by the Executive Secretary. For eligible releases that are discovered prior to July 1, 1994, the responsible party is required to expend the first \$25,000 in eligible costs as determined by the Executive Secretary.

(d) A completed eligibility application form submitted by the responsible party requesting coverage, within the time frames specified in R311-207-2(b), shall constitute a claim against the fund in accordance with Section 19-6-424.

(e) The responsible party's share of eligible costs shall remain the same, regardless of the number of responsible parties who are associated with a release and covered by the fund. Only one responsible party can claim against the fund per release in accordance with 19-6-419.

(f) When a facility has an open release and a subsequent PST Fund eligible release occurs at that facility, the PST Fund allowable coverage for the subsequent release will be limited to the amount required to investigate and remediate the subsequent release up to the maximum allowable by the Utah Underground Storage Tank Act 19-6-419. Additional PST Fund monies cannot be obtained for the investigation and remediation of the original release through the coverage of a subsequent release. The Executive Secretary shall determine the allowable coverage for a subsequent release. When the Executive Secretary has made a determination that the clean up standards established for the site pursuant to R311-211-5 have been achieved for a release, the release shall receive a "No Further Action" status. The maximum coverages allowed in 19-6-419 for a series of releases cannot be aggregated to provide additional reimbursement over the maximum for any release included in the series.

R311-207-3. Prerequisites for Submission of Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.

(a) Upon making a claim for coverage under the fund, and after receiving notice from the Executive Secretary that they are eligible to claim against the fund, the owner or operator shall respond to the compliance schedule issued by the Executive Secretary with work plans. The work plans may address three phases of the

compliance schedule as determined by the Executive Secretary:

- (1) tasks required to bring the site under control;
- (2) tasks required to determine the extent and degree of the release; and
- (3) tasks required to remediate the site until the Executive Secretary is satisfied that remediation has achieved the clean up goals as described in Section R311-211 or until further remediation is not feasible as determined by the Executive Secretary.

(b) The work plan shall include a budget for the work. The budget shall be in compliance with R311-207-4(e)(1) and (2). The budget shall include proposed costs in an itemized format as described in Section R311-207-4(a).

(c) The proposed consultant must have an approved Statement of Qualification. The Statement of Qualification shall include information about the qualifications of all proposed consultants or other persons who will be performing investigation or corrective action activities concurrently with the work plans. The submission shall include information required by the Statement of Qualification form prepared by the Executive Secretary, and at least three letters of reference from entities that have retained the services of the consultant. This Statement of Qualification must be updated annually and shall be approved, by the Executive Secretary, for a period of one year. Letters of reference are not required to be resubmitted annually. The information submitted shall demonstrate that the following standards have been met:

(1) The proposed consultant shall be of good character and reputation regarding such matters as control of costs, quality of work, ability to meet deadlines, and technical competence;

(2) The person directly overseeing the work must be a Certified UST Consultant in conformance with R311-201-2(a), R311-201-4(a) and R311-201-6(a) and,

(3) Personnel must have completed Occupational Safety and Health Agency-approved safety training and any other applicable safety training, as required by federal and state law.

(4) The consultant must carry the following insurance:

(A) Commercial General Liability Insurance or Comprehensive General Liability Insurance, including coverage for premises and operation, explosion, collapse and underground hazards, products and completed operations, contractual, personal injury and death, and catastrophic, with limits of \$1,000,000 minimum per occurrence, \$2,000,000 minimum general aggregate, and \$2,000,000 minimum products or completed operations aggregate;

(B) Comprehensive Automobile Liability Insurance, with limits of \$1,000,000 minimum and \$2,000,000 aggregate; and

(C) Workers' Compensation and Employers' Liability Insurance, as required by applicable state law.

(d) The work plan shall include information about the responsible party's contract with any proposed consultant or other person performing remedial action concurrently with the work plans. That information shall demonstrate that the following requirements have been met, as determined by the Executive Secretary:

(1) The contract shall be with the consultant, and shall specify the key personnel, for which qualifications are submitted under R311-207-3(c);

(2) The contract shall require a 100 percent payment bond through a United States Treasury-listed bonding company, or other equivalent assurance;

(3) The consultant shall have no cause of action against the state for payment;

(4) The contract will specify a subcontracting method consistent with the requirements of R311-207;

(5) The contract shall require, and include documentation that the consultant carries the insurance specified in R311-207-3(c)(5).

(6) Payment under the contract shall be limited to amounts that are customary, legitimate, and reasonable;

(7) The contract shall include a provision indicating that the State of Utah is not a party to the contract, unless the State of Utah is a responsible party; and

(8) Any other requirements specified by the Executive Secretary.

(e) The work plan shall include any additional information required by 40 CFR 280.

(f) The Executive Secretary may waive specific requirements of Section R311-207 if he determines there is good cause for a waiver, and that public health and the environment will be protected. The Executive Secretary may also consider, in determining whether to grant a waiver, the extent to which the financial soundness of the fund will be affected.

(g) Once the responsible party's share of eligible costs has been spent in accordance with Section 19-6-419, the Executive Secretary shall review and approve or disapprove work plans and the corrective action plan and all associated budgets. For costs to be covered by the fund, the Executive Secretary must approve all work plans, corrective action plans, and associated budgets before a responsible party initiates any work, except as allowed by Sections 19-6-420(3)(b) and 19-6-420(6).

(h) A request for time and material reimbursement from the Fund must be received by the Executive Secretary within one year from the date the included work was performed or reimbursement shall be denied. If there are any deficiencies in the request, the owner/operator shall have 90 days from the date of their notification of the deficiency to correct the deficiency or the amount of the deficient item(s) shall not be reimbursed. If a release was initially denied eligibility and is subsequently found to be eligible, this provision shall apply only to the portion of work conducted following the determination that the release is eligible for reimbursement. The responsible party may submit claims for reimbursement where the work is more than one year old until April 2, 2003.

(i) The request for final reimbursement from the fund must be received by the Executive Secretary within one year from the date of the "No Further Action" letter issued by the Executive Secretary or reimbursement shall be denied. If a release is re-opened as provided for in the "No Further Action" letter, payments from the fund may be resumed when approved by the Executive Secretary.

R311-207-4. Submission Requirements for Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.

(a) In order to receive payment from the fund, a claimant shall submit an invoice to the Executive Secretary. The invoice from the owner to the fund shall be on the form or forms provided by the Executive Secretary. Reimbursement may be on a pay for performance or on a time and material basis as approved in advance by the Executive Secretary. All costs for time and material reimbursement shall be itemized at a minimum to show the following:

(1) amounts allocated to each approved work plan budget;

(2) employee name, date of work, task or description of work, labor cost and the number of hours spent on each task;

(3) sampling, reporting, and laboratory analysis costs;

(4) equipment rental and materials;

(5) utilities;

(6) other direct costs; and

(7) other items as determined by the Executive Secretary.

(b) All itemized expenses shall indicate the full name and address of the company or contractor providing materials or performing services.

(c) All expenses for time and material reimbursement shall be documented on a monthly basis, or as otherwise directed by the Executive Secretary, with a copy of the original bill provided to the Executive Secretary by the owners or operators. The claimant shall provide documentation that claimed costs and associated work were reasonable, customary, and legitimate in accordance with Sections R311-207-5 and R311-207-4(e).

(d) For time and material based reimbursement, before receiving payment under Section 19-6-419(1)(b), the responsible party shall provide proof of past payments for services or construction rendered, in a form acceptable to, or as directed by, the Executive Secretary, unless the Executive Secretary has agreed to other arrangements. The owner or operator shall remain primarily liable, however, for all costs incurred and should obtain lien releases from the company or contractor providing material or performing services.

(e) For time and material based reimbursement, documentation of expenses for construction or other services provided by a subcontractor retained by an environmental consultant or contractor shall include one or more of the following items:

(1) a minimum of three competitive bids by responsive bidders. To be competitive:

(A) Two of the bids must be from bidders who are not related parties. "Related parties" for the purpose of this rule, shall mean organizations or persons related to the consultant by any of the following: marriage; blood; one or more partners in common with the consultant; one or more directors or officers in common with the consultant; more than 10% common ownership direct or indirect with the consultant.

(B) The bid specifications shall contain a clear and accurate description of the technical requirements for

the material, product or service and shall not contain features which unduly restrict competition. The bid specifications shall include a statement of the qualitative nature of the material, product or service to be procured, and, when necessary shall set forth those minimum essential characteristics.

(C) For frequently used services such as drilling, competitive bid schedules may be taken by the consultant once each calendar year in January with the results provided to the Executive Secretary. The prices from the lowest responsible bidder will be used for at least the following 12 months and will remain in effect until re-bid by the consultant and approved by the Executive Secretary. The Executive Secretary may reject bid prices that are not customary, reasonable and legitimate. The lowest bid from a responsible bidder will establish the maximum dollar amount the PST Fund will reimburse the owner for these services, regardless of whether the owner accepts that bid or another;

(2) sole source justification;

(A) Analytical laboratories may be justified based on service, data quality and cost;

(3) documentation that expenses have been for reasonable, customary, and legitimate purposes; or

(4) other documentation as required or requested by the Executive Secretary.

(f) In accordance with Section 19-6-420, the Executive Secretary may not authorize payment from the fund for services provided by consultants, contractors, or subcontractors which are in non-compliance with the requirements of Section R311-207 or any other applicable federal, state, or local law.

(g) Any third party claims brought against the owner or operator or any occurrence likely to result in third party claims against the owner or operators as a result of the release must be immediately reported to the State Risk Manager and to the Executive Secretary.

(h) The Executive Secretary may reimburse claimants based on pay for performance for the investigation, abatement or remediation of eligible PST fund sites. Under a pay for performance cleanup the claimant is reimbursed on a fixed price schedule as measurable contaminant level goals are reached. The claimant's reimbursement under pay for performance for the work anticipated shall be supported by competitive bidding, sole source justification or reasonable, customary and legitimate costs as approved by the Executive Secretary. Itemization of expenses is not required for payment of a claim unless specifically required in a work plan by the Executive Secretary.

R311-207-5. Responsible Parties' Standard Liability and Customary, Reasonable and Legitimate Expenses.

(a) Costs claimed by the responsible party in accordance with Section 19-6-419(1) must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the Executive Secretary. The Executive Secretary may determine the amount of fund monies that will be reimbursed to an owner or operator for items including, but not limited to, labor, equipment, services, and tasks established according to the provisions of R311-207-7 or such other methods that are applicable to the item or task. As conditions require, costs of the following activities may be considered to be customary, reasonable, and legitimate: performing abatement, investigation, site assessment, monitoring, or corrective action activities; providing alternative drinking water supplies; and settling or otherwise resolving third party damage claims and settlements in accordance with Section 19-6-422.

(b) This rule incorporates by reference the TABLE OF UTAH PETROLEUM STORAGE TANK TRUST FUND TIME AND MATERIAL REIMBURSEMENT STANDARDS dated November 14, 2002. This document contains specific items that will and will not be reimbursed by the Fund.

(c) This rule incorporates by reference the UTAH PETROLEUM STORAGE TANK FUND, MAXIMUM ALLOWABLE RATE LIST FOR EQUIPMENT AND SUPPLIES as revised November 14, 2002. This document contains specific rates the Fund will reimburse the responsible party or consultant for the included items.

(d) If a claim that does not comply with the requirements of R311-207 is returned by the Executive Secretary to a responsible party or consultant for correction, the responsible party or consultant shall not claim for reimbursement the costs expended to correct and re-submit the claim.

(e) The Petroleum Storage Tank Trust Fund may reimburse an owner or operator or other eligible claimant for the use or purchase of his consultant's originally designed and manufactured equipment provided the cost is customary, reasonable, and legitimate as determined by the Executive Secretary. The rate of reimbursement shall not exceed the consultant's direct labor hours for manufacturing at specified fixed hourly rates in the rate schedule approved by the Executive Secretary and the materials at cost to the consultant. Material costs shall include

adjustments for all available discounts, refunds, rebates and allowances which the consultant reasonably should take under the circumstances, and for credits for proceeds the consultant received or should have received from salvage and material returned to suppliers. In no event shall the price paid by the Petroleum Storage Tank Trust Fund exceed the sales price of comparable equipment available to other customers through the consultant or through another source. The consultant's claimed direct labor hours for manufacturing and costs shall be documented through time sheets, original invoices or other documents acceptable to the Executive Secretary. No reimbursement shall be made for undocumented labor hours and costs. No reimbursement shall be made for labor hours and costs associated with patenting or marketing.

R311-207-6. Subrogation.

When the State makes a payment from the Petroleum Storage Tank Trust Fund, the State shall have the right to sue or take other action as may be necessary and appropriate to recover the amount of payment from any third party who may be held responsible. The petroleum underground storage tank owner or operator or both who receive payment from the Fund must execute and deliver all necessary documents and cooperate as necessary to preserve the State's rights and do nothing to prejudice them.

R311-207-7. Consultant Labor Codes, Titles, Duties and Fee Schedules.

(a) This rule incorporates by reference the Consultant Personnel Qualifications and Task Descriptions table, dated May 1998, and consisting of standardized personnel qualification categories and task descriptions to be used for PST Fund-reimbursable activities. Consultants must assign to one of the categories listed in the table, any service time for an individual that is billed to a responsible party or directly to the PST Fund and for which reimbursement is claimed, unless the duties of the individual are so unusual that they do not closely approximate any of the listed categories. By submitting a claim for reimbursement for a labor category, the consultant warrants that the person so claimed meets the described education, skills and experience.

(b) A consultant may file with the Executive Secretary, and amend once a year in January (absent unusual circumstances), the hourly fees at which it bills clients in Utah for the service of its personnel as described in (a). The Executive Secretary shall calculate new allowable reimbursement rates once a year. Consultant fees, reimbursement rate schedules and amendments must be maintained in confidence by and accessible only to the staff of the Executive Secretary, as the consultant's expectation of privacy is reasonable and outweighs the merits of public disclosure. The calculated maximum allowable reimbursement rates must be maintained in confidence by and accessible only to the staff of the Executive Secretary.

(c) When fee schedules, from companies who have performed work reimbursed by the Fund, have been filed in a number sufficient for meaningful statistical analysis, the Executive Secretary shall compute a range of allowable reimbursement rates for each code listed in (a), the maximum of each range shall be the mean fee for each code plus one standard deviation (rounded up to the nearest whole dollar) unless modified as provided for in R311-207-7(e). The Executive Secretary shall then notify each filing firm whether its fees exceed the range of allowable reimbursement rates. If they do exceed the allowable range, the firm shall then resubmit a revised fee schedule that is within the allowable range. The amount by which a consultant's fee for a particular code exceeds the allowable reimbursement rate will be presumed unreasonable and will not be reimbursed by the Fund.

(d) The Executive Secretary may approve a range of reimbursement rates for a particular category when proposed by a consultant. However, the maximum of this range shall not exceed the maximum reimbursement rate as calculated in R311-207-7(c). When a range is proposed, the average of the range will be used for the calculations in R311-207-7(c).

(e) If a consultant's fees exceed the maximum of the range in not more than three categories but are lower in the other categories, the average of the maximum reimbursement rates as calculated in R311-207-7(c) for the categories for which that consultant provides services will be calculated. If the average of the consultant's fees is lower than this average, the Executive Secretary may approve all of the fees as proposed.

(f) The Executive Secretary may request a detailed explanation of fee structures when a submitted fee appears to vary significantly from those submitted by other consultants for the same code. The Executive Secretary reserves the right not to use fees that significantly vary from similar fees submitted by other consultants, fees from consultants who have not submitted claims for reimbursement, fees from consultants who have not submitted proper documentation for claim reimbursement, fees from consultants that do not currently have key personnel holding

valid certification as a Certified UST Consultant and other fees not deemed acceptable by the Executive Secretary.

(g) A consultant not filing its schedule of fees must submit its invoices for services formatted in accordance with R311-207-7(a). Any fees which exceed the average of allowable reimbursement rates will be presumed unreasonable.

(h) A responsible party or consultant may overcome the presumption that a fee is unreasonable by presenting clear and concise evidence to the Executive Secretary that their fees are reasonable and customary. Excessive overhead factors will not meet this test.

(i) The Executive Secretary may determine the amount of fund monies that will be reimbursed to a responsible party for commonly performed tasks. The amount of fund monies that will be reimbursed for a particular task, item or activity may be established by R311-207-7(c), competitive bid, market survey or other applicable method as determined by the Executive Secretary. Public comment will be taken before proposed reimbursement rates are adopted.

R311-207-8. Third Party Claims Apportionment.

To prioritize payments from the Petroleum Storage Tank Fund as required by Subsection 19-6-419(5)(a), yet promptly authorize the payment of third party claims prior to a determination that corrective action has been properly performed and completed, the Executive Secretary may utilize budget projections to allocate coverage available for the payment of third party claims. The Executive Secretary may amend budget projections as frequently as he deems appropriate. Costs among third party claimants shall be apportioned after the responsible party has agreed to the settlement and the state risk manager has approved the settlement. Apportionment and priority shall be based upon the order in which an approved and agreed upon claim is received by the Executive Secretary.

R311. Environmental Quality, Environmental Response and Remediation.

R311-208. Underground Storage Tank Penalty Guidance.

R311-208-1. Definitions.

Definitions are found in Rule R311-200.

R311-208-2. Underground Storage Tank Penalty Criteria.

(a) This guidance provides criteria to the Executive Secretary of the Board in implementing penalties under Sections 19-6-407, 19-6-408, 19-6-416, 19-6-416.5, 19-6-425 and any other Sections authorizing the Executive Secretary to seek penalties.

(b) The procedures in Rule R311-208 are intended solely for the guidance of the Executive Secretary and are not intended, and cannot be relied upon, to create a cause of action against the State.

(c) This guidance and ensuing criteria is intended to be flexible and liberally construed to achieve a fair, just, and equitable result.

R311-208-3. Satisfaction of Penalty Under Stipulated Penalty Agreement.

(a) The Executive Secretary may accept the following methods of payment or satisfaction of a penalty to promote compliance and to achieve the purposes set forth in Section 19-1-102(3):

(1) Payment of the penalty may be extended based on a person's inability to pay. This should be distinguished from a person's unwillingness to pay. In cases of financial hardship, the Executive Secretary may accept payment of the penalty under an installment plan or delayed payment schedule with interest.

(2) Without regard to financial hardship, the Executive Secretary may allow a portion of the penalty to be deferred and eventually waived if no further violations are committed within a period designated by the Executive Secretary.

(3) In some cases, the Executive Secretary may allow the violator to satisfy the stipulated penalty by completing an environmentally beneficial mitigation project approved by the Executive Secretary. The following criteria shall be used in determining the eligibility of such projects:

(A) The project must be in addition to all regulatory compliance obligations;

(B) The project preferably should closely address the environmental effects of the violation;

- (C) The actual cost to the violator, after consideration of tax benefits, must reflect a deterrent effect;
- (D) The project must primarily benefit the environment rather than benefit the violator;
- (E) The project must be judicially enforceable;
- (F) The project must not generate positive public perception for violations of the law.

R311-208-4. Factors for Imposition of Section 19-6-416 Penalties.

(a) Where the Executive Secretary determines a penalty is appropriate under Section 19-6-416, the penalty shall not be more than \$500 per occurrence. Factors that mitigate against a higher penalty are:

- (1) A facility's certificate of compliance recently lapsed and product has been delivered.
- (2) A facility is in compliance and replaces their tank and received one delivery of fuel without a certificate of compliance or authorization from the department, or a new facility or new tanks receive an initial delivery of fuel without a certificate of compliance or authorization from the Executive Secretary.

(b) The Executive Secretary may assess a penalty against each violator involved in an illegal delivery occurrence. If a violator is operating as an owner/operator and deliverer, the violator may be assessed a penalty in each capacity.

R311-208-5. Factors for Seeking or Negotiating Amount of Section 19-6-425 Penalties.

(a) Under Section 19-6-425, the court establishes penalty amounts rather than the Executive Secretary. Nonetheless, the Executive Secretary may enter a stipulated penalty agreement with the violator.

(b) The Executive Secretary shall consider the following factors when negotiating or calculating a penalty to promote a more swift resolution of environmental problems and promote compliance:

(1) Economic benefit. The costs to an owner or operator delayed or avoided by not complying with applicable laws or rules.

(2) Gravity of the violation. The extent of deviation from the rules and the potential for harm to health and the environment, regardless of the extent of the harm that actually occurred. This factor may be adjusted upward or downward depending on:

(A) The degree of cooperation or noncooperation and good faith efforts to comply. Good faith takes into account the openness in dealing with the violations, promptness in correction of problems, and the degree of cooperation with the State;

(B) The willfulness or negligence of the violation;

(C) The history of compliance or noncompliance; and

(D) Other unique factors including how much control the violator had over and the foreseeability of the events constituting the violation, whether the violator made or could have made reasonable efforts to prevent the violation, whether the violator knew of the legal requirements which were violated, and degree of recalcitrance

(3) Environmental sensitivity. The actual impact of the violation(s) that occurred.

(4) The number of days of noncompliance.

(5) Response and investigation costs incurred by the State and others.

(6) The possible deterrent effect of a penalty to prevent future violations.

(c) All cases involving major violations with actual or high-potential for harming public health or the environment, and all cases involving a history of repeat violations by the same violator will require a penalty as a part of any settlement, unless good cause is shown for not seeking a penalty.

(d) Where the Executive Secretary determines that a penalty is appropriate under Section 19-6-425, the Executive Secretary may negotiate the penalty based on the following categories and ranges:

(1) Major Violations: \$5,000 to \$10,000 per violation. This category includes major deviations from the requirements of the rules or Act, violations that cause or may cause substantial or continuing risk to human health and the environment, or violations that may have a substantial adverse effect on the regulatory program.

(2) Moderate Violations: \$2,000 to \$7,000 per violation. This category includes moderate deviations from the requirements of the rules or Act but some requirements have been implemented as intended, violations that cause or may cause a significant risk to human health and the environment, or violations that may have a significant notable adverse effect on the regulatory program.

(3) Minor Violations: Up to \$3,000 per violation. This category includes slight deviations from the rules or Act but most of the requirements are met, violations that cause or may cause a relatively low risk to human health

and the environment, or violations that may have a minor adverse effect on the regulatory program.

(e) The Executive Secretary may consult "EPA Penalty Guidance for Violations of UST Regulations" (OSWER Directive 9610.12) as supplemental guidance to R311-208-5.

R311. Environmental Quality, Environmental Response and Remediation.

R311-209. Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation.

R311-209-1. Definitions.

Definitions are found in Section R311-200.

R311-209-2. Use of the State Cleanup Appropriation.

The Executive Secretary shall authorize action or expenditure of money from the Petroleum Storage Tank Cleanup Fund and the State Cleanup Appropriation, as authorized by Sections 19-6-405.7, 19-6-409(5) and 19-6-424.5(9) respectively, when:

- (a) The release is from a regulated UST,
- (b) The owner or operator is not fully covered by the Petroleum Storage Tank Trust Fund,
- (c) The release is a direct or potential threat to human health or the environment, and
- (d) The owner or operator is unknown, unable, or unwilling to bring the site under control or remediate the site to achieve the clean-up goals as described in Section R311-211, or
- (e) Other relevant factors are evident as determined by the Executive Secretary.

R311-209-3. Criteria for Allocating Petroleum Storage Tank Cleanup Funds and the State Cleanup Appropriations.

When determining priorities for authorizing action or expenditures from the Petroleum Storage Tank Cleanup Fund and the State Cleanup Appropriation, the Executive Secretary shall give due emphasis to releases that present a threat to the public health or the environment on a case-by case basis using the following criteria:

- (a) The immediate or direct threat to public health or the environment,
- (b) The potential threat to public health or the environment,
- (c) The economic consideration and cost effectiveness of the action, and
- (d) The technology available, or
- (e) Other relevant factors as determined by the Executive Secretary.

R311. Environmental Quality, Environmental Response and Remediation.

R311-210. Administrative Procedures for Underground Storage Tank Act Adjudicative Proceedings.

R311-210-1. Definitions.

Definitions are found in Section R311-200.

R311-210-2. General Provisions.

(a) In accordance with the Utah Administrative Procedures Act (UAPA), Utah Code Annotated, 1953 as amended, Section 63G-4-102 et seq., these rules set forth procedures which govern orders and notices by the Executive Secretary and adjudicative proceedings before the Executive Secretary, the Board and before the Executive Director. The Executive Secretary may issue UAPA-exempt orders or notices of violation as provided in Subsection 63G-4-102(2)(k) or may issue orders or notices under UAPA.

(b) Recognizing the potential for an ever increasing burden from adjudicating a matter, these rules are to facilitate and encourage that disputes be resolved at the lowest level possible.

(c) These rules are not intended to be comprehensive, but, are for supplementation, and provide for the inherent needs and unique purposes of proceedings directed or addressed by the Underground Storage Tank Act.

(d) These rules shall be liberally construed to secure a just, speedy and economical determination of all issues presented. These rules shall also be construed to be in compliance with the UAPA as far as the UAPA is applicable, the Environmental Quality Code (Section 19-1 et seq.) and the Underground Storage Tank Act. Whenever indicated, certain provisions have exclusive application to either UAPA-exempt, or UAPA formal or

informal proceedings.

(e) Individuals who are participants to a proceeding, an agency which is a participant to a proceeding, or an individual designated by a partnership, corporation, association or governmental subdivision may represent their interest in the proceeding. Any participant may be represented by an attorney licensed to practice in the State of Utah or attorneys licensed to practice law in another jurisdiction which meet the rules of the Utah State Bar for practicing law before the courts of the State of Utah.

(f) 1. Issuance of any order or notice shall be made by certified mail to the party's most current address available to the agency. The agency may presume that the most current address available for an owner or operator is provided in the notification form that owners and operators are required to file with the agency. If delivery of certified mail is refused, the issued order or notice shall then be sent by regular mail.

2. All subsequent papers shall be sent by regular mail to each party or to the party's attorney if an attorney for that party has entered an appearance. Service shall be made at the address of initial service or at an address subsequently provided to the Presiding Officer and all parties.

3. In matters where the Executive Secretary is a participant, service shall be made to the Executive Secretary and the attorney representing the Executive Secretary.

(g) Parties that request a determination of responsible parties or apportionment of liability among responsible parties shall pay the costs of the action requested at a rate set by the state legislature if the request is granted. Parties that request agency review of an action which determined responsible parties or apportioned liability shall pay the costs of further proceedings at a rate set by the state legislature. However, when a final determination of liability is made and the requesting party is less than one hundred per cent liable, the costs of the proceedings shall be included in the apportionment decision and the requesting party may recover its costs from the other parties according to each party's apportioned liability. If the agency initiates such proceedings without a requesting party, the agency shall pay the costs of the proceedings and may recover costs of the proceedings as provided above.

(h) Except as otherwise stated in Section R311-210, informal adjudicative proceedings shall be conducted in accordance with Section 63G-4-203 of UAPA.

(i) A contested order revoking a certificate of compliance may be, in accordance with Section 19-6-414(3), appealed to the Executive Director. In such contested orders the term "Board" as used in R311-210 means the Executive Director.

(j) The term "issue" as in issuing an order means the time a signed order is mailed in accordance with these rules. Where delivery of an order or notice is refused, the date of issuance shall be the date the refused order or notice was sent by certified mail.

(k) Time shall be computed as provided in Rule 6 of the Utah Rules of Civil Procedure.

(l) At the time these rules or any amendments become effective, they will apply to ongoing adjudicative proceedings.

R311-210-3. Orders and Notices of Violation.

(a) All UAPA-exempt orders or notices of violation issued under 63G-4-102(2)(k) are effective upon issuance unless otherwise provided in the order and shall become final if not contested within 30 days after the date issued. Except as provided in subsection R311-210-3(b), failure to timely contest a UAPA-exempt order or notice of violation waives any right of administrative contest, reconsideration, review or judicial appeal. The contesting party has the burden of proving that an order or notice of violation was contested within 30 days of its issuance.

(b) A party may seek to have the Executive Secretary set aside an order or notice of violation which was not contested within 30 days and became final by following the procedures outlined in the Utah Rules of Civil Procedure for setting aside default judgments.

1. A motion to set aside an order or notice of violation that became final shall be made to the Executive Secretary.

2. If a motion to set aside an order or notice of violation that became final is denied, the party may seek reconsideration or agency review on only that decision to deny such motion to set aside the order or notice.

(c) In proceedings involving multiple parties, a party that has an order or notice of violation issued against it which becomes final by not being timely contested is precluded from participating in any further adjudicative proceedings with the other parties on the matter, unless the Executive Secretary sets aside the order under R311-210-

3(b) or unless such party is permitted to enter an appearance as Amicus Curiae as provided in R311-210-6(g).

(d) All initial orders and notices of violation issued by the Executive Secretary shall be in a log that is available for public inspection during office hours.

R311-210-4. Contesting a UAPA-exempt Order or Notice of Violation Issued by the Executive Secretary.

(a) The validity of any UAPA-exempt order or notice of violation issued by the Executive Secretary may be contested by filing a request for agency action. A request for agency action to contest a UAPA-exempt order or notice of violation and all subsequent proceedings acting on such a request are governed by the UAPA as provided in Subsection 63G-4-102(2)(k).

(b)(1) Except as provided in subparagraph (c)(1), the validity of a UAPA-exempt order or notice of violation may be contested by filing a request for agency action, as specified in Section 63G-4-201 of the UAPA, with the Board at the Solid and Hazardous Waste Control Board, Division of Environmental Response and Remediation, 168 North 1950 West, 1st Floor, PO Box 144840, Salt Lake City, Utah 84114-4840.

(2) The petitioner's request for agency action shall clearly express the reasons, facts and legal authority which forms the basis for contesting the order or notice of violation. The petitioner shall refer specifically to each numbered fact and violation arrived at in the order or notice of violation and with correspondingly numbered paragraphs shall admit or with appropriate explanation deny or dispute each fact and violation arrived at in the order or notice of violation. If the petitioner has other claims or defenses, the petitioner with reasons, facts and legal authority shall in short plain terms assert such claims or defenses.

(c)(1) A UAPA-exempt notice revoking a certificate of compliance under Section 19-6-414 may be contested by filing a request for agency action with the Executive Director of the Department of Environmental Quality at the Department of Environmental Quality, Office of the Executive Director, 168 North 1950 West, 2nd Floor, PO Box 144810, Salt Lake City, Utah 84114-4810.

(2) The petitioner's request for agency action with the Executive Director shall conform with Section 63G-4-201 of the UAPA and the above subparagraph (b)(2).

(d) Any request for agency action must be received for filing within thirty (30) days of the date the Executive Secretary issues the order or notice of violation.

(e) Notice of the time and place of any scheduled hearing for a request for agency action shall be given as provided in Section 63G-4-201(d) of UAPA. If a hearing has not been scheduled, the response shall give notice of the time and place of a pre-hearing conference to appropriately schedule a hearing. Notice of the time and place of a hearing shall be provided promptly after the hearing is scheduled.

R311-210-5. Contesting an Order or Notice of Violation Issued by the Executive Secretary Under UAPA.

(a) The recipient of an order or notice of violation issued by the Executive Secretary under UAPA may request agency review, as provided in Section 63G-4-301. Except as provided in subparagraph (b), agency review of a contested order issued under UAPA may be requested by filing a request for review with the Board at the Solid and Hazardous Waste Control Board, UST, 168 North 1950 West, 1st Floor, PO Box 144840, Salt Lake City, Utah 84114-4840.

(b) A notice revoking a certificate of compliance under Section 19-6-414 that is issued by the Executive Secretary under UAPA may be contested by filing a request for review with the Executive Director of the Department of Environmental Quality at the Department of Environmental Quality, Office of the Executive Director, 168 North 1950 West, 2nd Floor, PO Box 144810, Salt Lake City, Utah 84114-4810.

(c) Agency review of an order or notice is governed by Section 63G-4-301.

R311-210-6. Parties and Intervention.

(a) The following persons are parties to a proceeding governed by this rule:

1. The person or persons to whom the challenged order or notice of violation is directed;
2. The Executive Secretary; and
3. All persons whose legal rights or interests are substantially affected by the proceeding, and to whom intervention rights have been granted under R311-210-6(d).

(b) In a proceeding requested by the person to whom the challenged order or notice of violation is directed, that person shall be the petitioner and the Executive Secretary or any other non-requesting parties shall be the

respondent.

(c) In a proceeding requested by the person requesting intervention, the intervenor shall be the petitioner (provided that intervention is granted), and the Executive Secretary and any persons to whom the challenged order or notice of violation is directed shall be the respondents.

(d) Intervention: A person who is not a party to a proceeding may request intervention under Section 63G-4-207 of the UAPA for the purpose of filing a request for agency action, and may simultaneously file that request.

(e) Any request for intervention and agency action must be received as provided in R311-210-4 within 30 days of the date of the pertinent order or notice of violation. The person seeking intervention shall provide copies of the request and any accompanying motions, notices, and requests to all parties.

(f) Any party may, within 20 days of the receipt of the agency's notice of a request for agency action issued under 63G-4-201(3)(d) and (e) or such earlier time as established by the presiding officer, respond to a request for intervention. If no presiding officer with a general appointment exists, the Chair of the Board may act as presiding officer for purposes of this paragraph.

(g) Persons may be permitted by the presiding officer to enter an appearance as Amicus Curiae, subject to conditions established by the presiding officer.

R311-210-7. Presiding Officer.

(a) In proceedings to review UAPA-exempt orders and notices of violations, the Board is the "agency head" as the term is used in the UAPA.

(b) When acting as agency head, the Board is the "presiding officer" as that term is used in the UAPA, except:

1. the Chair of the Board shall be considered the presiding officer to the extent that these rules allow; and
2. the Board may by order appoint a presiding officer to preside over all or a portion of the proceedings.

(c) When a UAPA proceeding is before the Executive Secretary, the Executive Secretary is the "agency head" and the "Presiding Officer," and the Board is the "superior agency" as those terms are used in the UAPA. When acting as agency head, the Executive Secretary may appoint an individual or panel to be the Presiding Officer.

(d) A presiding officer when appointed by the appointing authority shall be empowered with such authority as granted by the appointing authority and the UAPA, except making final substantive decisions and as may be limited by Section R311-210 or the appointing authority.

R311-210-8. Designation of Formal Proceedings.

(a) Proceedings pursuant to a request for agency action are designated as formal, including: enforcement, violations, non-compliance, civil penalties, assessments, revocations, lapsed or terminated certificates, abatements, corrective plans, releases, tank tightness, claims, and other matters determining a person's legal interest.

(b) UAPA proceedings before the Executive Secretary including those determining responsible parties and apportioning liability among responsible parties shall be designated formal.

R311-210-9. Conversion of Proceedings.

(a) In accordance with the UAPA, the presiding officer, may, at any time, convert proceedings it is adjudicating which are designated informal to formal, and proceedings which are designated as formal to informal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

(b) If multiple issues are part of one proceeding, the presiding officer may separate the proceedings to convert one or more of the matters from formal to informal or informal to formal while allowing the other matters to proceed at the ongoing designation.

R311-210-10. Preliminary Matters to Apportionment and Other Proceedings.

(a) The Executive Secretary may request owners or operators of a facility that had a release of a regulated substance or any persons identified as potential responsible parties to provide information and documentation pertinent to the identification of other responsible parties. However, this does not prevent the Executive Secretary from determining responsible parties and apportioning liability. If information identifying or otherwise concerning other potentially responsible parties is provided, the forwarding of such information to the Executive Secretary is not to be construed as a request to determine responsible parties or apportion liability.

(b) The Executive Secretary may make a preliminary identification of as many responsible parties as reasonably possible that are to be a part of an initial proceeding. The preliminary identification of responsible parties does not constitute an order. The preliminary identification may be made solely from information provided in the manner described in subsection R311-210-10(a). In making such a determination, the Executive Secretary may assess whether any identification of a responsible party by other parties is without merit, or may find that no grounds exist to identify such person as a responsible party.

(c) Before any proceeding is commenced, the Executive Secretary, or a representative of the Executive Secretary may seek to resolve the impending proceeding by encouraging or facilitating settlement.

R311-210-11. Multiple Issues or Parties.

(a) Multiple issues may be determined in one proceeding, or in one resulting order or notice of violation.

(b) Multiple issues having been determined in a single proceeding may, if contested, proceed separately.

(c) The naming or identifying of responsible parties as part of an investigation whether or not it results in an order or notice of violation, or as part of an adjudication does not preclude the naming or identifying of different or additional responsible parties in the same investigation or adjudication for different issues, or separate investigations or adjudications concerning different issues.

R311-210-12. Motions.

(a) In an informal proceeding, a motion or response to a motion may be submitted orally or in writing as directed by the presiding officer.

(b) In a formal proceeding, any motion or response to a motion shall be submitted in writing to the presiding officer, unless otherwise directed by the presiding officer. The motion or response may be accompanied by a short supporting memorandum of fact and law. Supporting or contravening affidavits may be submitted with the motion or response.

(c) Responses to motions must be received by the presiding officer ten days after the motion is submitted, unless otherwise directed by the presiding officer.

(d) Although the agency or parties may file responses as provided in R311-210-12(c), such responses are not required and the agency or parties will not be subject to default for declining to file responses.

(e) Dispositive motions that concern facts or matters beyond those contained solely within the request for agency action shall be completed 30 days before the scheduled hearing, unless otherwise directed by the presiding officer.

R311-210-13. Record Submission and Review.

In accordance with Section 63G-4-203(e), in informal proceedings the presiding officer may require parties to submit pertinent information within a designated response period. Parties' access to information shall be as provided in the UAPA. The presiding officer may sanction a party that does not submit information that is requested by the presiding officer. Such sanctions include exclusion of evidence at the hearing, being held in default, or other applicable sanctions found in Rule 37(b) of the Utah Rules of Civil Procedure. If a hearing is scheduled, a party shall submit to the presiding officer any information that was not requested that the party intends to use at the hearing 30 days before the hearing. Failure to timely submit such information may result in the presiding officer excluding the information at the hearing.

R311-210-14. Discovery.

(a) In formal proceedings, all parties shall submit to the presiding officer all relevant information they possess or are aware of necessary for parties to support their claims or defenses within 30 days after proceedings are commenced, and with newly acquired information within 30 days after the party discovers such information, but not less than 30 days before a formal hearing. The Executive Secretary satisfies this obligation by making the public agency file available for inspection. If a party fails to timely provide the required information, the presiding officer may enter an order of default, exclude evidence, or enter other applicable sanctions found in Rule 37(b) of the Utah Rules of Civil Procedure. Parties submitting the information shall provide notice to all other parties with a list or brief summary of all information being submitted. Parties shall have access to the information submitted to the presiding officer, and to information acquired through agency investigations and other information contained in its

files.

(b) In formal proceedings the presiding officer may vary the manner of discovery if it appears appropriate, or upon the motion of a party and for good cause shown. If discovery is varied to be more in accordance with the Utah Rules of Civil Procedure, copies of all discovery conducted between parties shall be provided to the presiding officer at the cost to the party seeking discovery.

(c) In formal proceedings, upon approval by the presiding officer, any party may serve on any other party a request to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon if the information sought is reasonably calculated to lead to the discovery of admissible evidence.

1. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

2. The party upon whom the request is served shall serve a written response within 20 days after the service of the request. The presiding officer may allow a shorter or longer time. The response shall state with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. The party submitting the request may move for an order compelling inspection and seek any sanction referred to above in subsection (a) with respect to any objection to or failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

R311-210-15. Pre-Hearing Matters.

(a) In proceedings in which a hearing may be held, the presiding officer may, upon written notice to all parties of record, hold a pre-hearing conference. Matters that may be discussed at the pre-hearing conference include: setting a hearing date; formulating or simplifying the issues; obtaining stipulations, admissions of fact and of documents which will avoid unnecessary proof; arranging for the exchange of proposed exhibits or prepared expert testimony; identifying all other proposed exhibits or witnesses; outlining or reviewing procedures to be followed; encouraging joint pleadings, exhibits, testimony and cross-examination where parties have common interests; and facilitating settlement and other agreements. Any other matters that may expedite the orderly conduct of the proceedings may be discussed.

(b) Parties to a proceeding are encouraged to prepare a joint-proposed schedule addressing matters such as a hearing date, and motion and discovery cut off dates. If the parties cannot agree on a joint-proposed schedule, the presiding officer may consider proposals by any party.

(c) The presiding officer shall establish schedules for discovery and other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings.

R311-210-16. Conduct of Formal Hearings.

(a) All formal hearings shall be open to the public, unless otherwise ordered by the presiding officer for good cause shown.

(b) The presiding officer shall maintain order and may, recess the hearing for the time necessary to regain order if a person engages in disrespectful, disorderly, or contumacious conduct. The presiding officer may take measures to remove a person, including participants from the hearing, if necessary, to maintain order. If a participant shows persistent disregard on matters of order and procedure, the presiding officer may enter a sanction on the person including: restricting the person's participation, putting on evidence, or issuing an order of default.

(c) If a party desires to employ a court reporter to make a record of the hearing, the original transcript of the hearing shall be filed with the presiding officer at no cost to the agency.

(d) In apportionment proceedings, the order of presentation of evidence will be as follows, unless otherwise directed by the presiding officer: the responsible party most recently involved in the facility, with operators having priority over owners; then underground storage tank installation companies, then subsequent responsible parties in the order of recency of involvement in the facility; intervenor(s); the agency; and other interested parties. Argument normally will follow the same order. For other proceedings, the presiding officer may order the presentation of evidence in a manner deemed appropriate.

(e) Parties may question opposing witnesses on any matter relevant to the issue even though the matter was

not covered in direct examination. The presiding officer may limit or exclude friendly cross-examination. The presiding officer shall discourage and may prohibit parties from making their case through cross-examination.

(f) The presiding officer may question any party or witness and may admit any evidence believed relevant or material.

(g) The presiding officer may continue a hearing to another time or place if additional evidence is available or reasonably expected to be available and the presiding officer determines such evidence is necessary for the proper determination of the case.

R311-210-17. Rules of Evidence.

(a) The presiding officer is not bound by the rules of evidence and need not adhere to the rules as required in civil actions in the courts of this State. Nevertheless, in UAPA proceedings, the Utah Rules of Evidence shall be used as an appropriate guide insofar as they are not inconsistent with the UAPA and these Rules.

(b) In contested proceedings providing a hearing, if a witness' testimony has been reduced to writing and filed with the presiding officer at least 30 days prior to the hearing, the testimony may be placed into the record as an exhibit. Parties shall have an opportunity to cross-examine the witness on the testimony.

R311-210-18. Recommended Orders.

(a) If the presiding officer in a proceeding is an appointed presiding officer, at the conclusion of the hearing or taking evidence, the presiding officer cannot make any final substantive decisions, but, shall take the matter under advisement and shall submit to the appointing authority recommended orders. The recommended orders shall follow the form in the UAPA for signed and issued orders in informal or formal proceedings. All recommended orders will be public record and copies shall be distributed to all parties.

(b) Any party may, within 20 days of the date the draft order is mailed, delivered, or published, comment on the draft order.

(c) The appointing authority may adopt and sign the recommended orders or any portion of them as final orders; reject the recommended orders or any portion of them and make an independent determination based on the record or order further proceedings. If the appointing authority adopts or rejects a portion of the recommended orders, the appointing authority shall make specific reference to the portion adopted or rejected. If the appointing authority rejects the entire recommended orders, the appointing authority shall specifically state that they are rejected in their entirety. The appointing authority shall cite specifically to the record for the bases of any independent determinations in the final orders.

(d) The appointing authority may remand the matter to the presiding officer to take additional evidence. The presiding officer thereafter shall submit to the appointing authority new recommended orders.

(e) The Board adopting and signing recommended orders as final orders or making independent determinations and signing them as final orders pursuant to a request for agency action to contest an initial order does not constitute agency review, but is open to a request for reconsideration in accordance with Section 63G-4-302 of the UAPA.

(f) The appointing authority may modify this procedure with notice to all parties.

R311-210-19. Stays of Orders.

(a) Orders of the Executive Secretary are immediately effective upon being issued unless otherwise provided in the order. Upon a timely request for agency action or agency review to contest such orders, any person who desires a stay of the order before the next regular Board meeting may request a stay.

(b) A party seeking a stay of the order of the Executive Secretary shall file a motion with the presiding officer.

(c) The presiding officer may order a stay of the order of the Executive Secretary if the party seeking the stay demonstrates that:

1. The party seeking the stay will suffer irreparable harm unless the stay issues;
2. The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;
3. The stay, if issued, would not be adverse to the public interest; and
4. There is a substantial likelihood that the party seeking the stay will prevail on the merits of the

underlying claim, or the case presents serious issues on the merits which should be the subject of further evaluation by the presiding officer.

(d) No bond shall be required from the party requesting the stay.

(e) The Board may grant a stay of its order (or of the order of its appointed presiding officer) during the pendency of judicial review if the standards of R311-210-19(c) are met.

(f) The request for a stay shall be deemed denied if the presiding officer does not issue a written decision to deny or grant a stay of any order within ten working days of the filing of a written motion.

R311-210-20. Standard of Agency Review.

The standard of review of orders issued by the Executive Secretary following a formal UAPA proceeding that are before the superior agency shall be the standard delineated in Section 63G-4-403(4)(c)-(h) of UAPA.

R311. Environmental Quality, Environmental Response and Remediation.

R311-211. Corrective Action Cleanup Standards Policy - UST and CERCLA Sites.

R311-211-1. Definitions.

Definitions are found in Section R311-200.

R311-211-2. Source Elimination.

The initial step in all corrective actions implemented at UST and CERCLA sites is to take appropriate action to eliminate the source of contamination either through removal or appropriate source control.

R311-211-3. Cleanup Standards Evaluation Criteria.

Subsequent to source elimination, cleanup standards for remaining contamination which may include numerical, technology-based or risk-based standards or any combination of those standards, shall be determined on a case-by-case basis, taking into consideration the following criteria:

- (a) The impact or potential impact of the contamination on the public health;
- (b) The impact or potential impact of the contamination on the environment;
- (c) Economic considerations and cost effectiveness of cleanup options; and
- (d) The technology available for use in cleanup.

R311-211-4. Prevention of Further Degradation.

In determining background concentrations, cleanup standards, and significance levels, levels of contamination in ground water, surface water, soils or air will not be allowed to degrade beyond the existing contamination levels determined through appropriate monitoring or the use of other data accepted by the Board or the Executive Secretary as representative.

R311-211-5. Cleanup Standards.

(a) The following shall be the minimum standards to be met for any cleanup of regulated substances, hazardous material, and hazardous substances at a UST or CERCLA facility in Utah:

(1) for water-related corrective action, the Maximum Contaminant Limits (MCLs) established under the federal Safe Drinking Water Act or other applicable water classifications and standards; and

(2) for air-related corrective action, the appropriate air quality standards established under the Federal Clean Air Act.

(3) Other standards as determined applicable by the Board may be utilized.

(b) Cleanup levels below the MCLs or other applicable water, soil, or air quality standards may be established by the Board on a case-by-case basis taking into consideration R311-211-3 and R311-211-4.

(c) In the case of contamination above the MCL or other applicable water, soil, or air quality standards, if, after evaluation of all alternatives, it is determined that applicable minimum standards cannot reasonably be achieved, cleanup levels above these minimum standards may be established on a case-by-case basis utilizing R311-211-3 and R311-211-4. In assessing the evaluation criteria, the following factors shall be considered:

- (1) quantity of materials released;

- (2) mobility, persistence, and toxicity of materials released;
- (3) exposure pathways;
- (4) extent of contamination and its relationship to present and potential surface and ground water locations and uses;
- (5) type and levels of background contamination; and
- (6) other relevant standards and factors as determined appropriate by the Board.

R311-211-6. UST Facility Cleanup Standards.

(a) This rule incorporates by reference the Initial Screening Levels table dated November 1, 2005. The table lists initial screening levels for UST sites.

(b) If the Executive Secretary determines that a release from an underground storage tank has occurred, the Executive Secretary shall evaluate whether the contamination at the site exceeds Initial Screening Levels for the contaminants released. The Executive Secretary may require owners and operators to submit any information that the Executive Secretary believes will assist in making this evaluation.

(c) If all contaminants are below initial screening levels, the Executive Secretary shall evaluate the site for No Further Action determination.

(d) This rule incorporates by reference the Tier 1 Screening Criteria table dated November 1, 2005. The table lists cleanup criteria for UST sites. Tier 1 screening levels are only applicable when the following site conditions are met:

(1) No buildings, property boundaries or utility lines are located within 30 horizontal feet of the highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels in the tables referred to in subparagraphs (a) and (d) above, respectively, and;

(2) No water wells or surface water are located within 500 horizontal feet of the highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels in the tables referred to in subparagraphs (a) and (d) above, respectively.

(e) If any contaminants from a release are above the Initial Screening Levels, the Executive Secretary shall require owners and operators to submit all relevant information required to evaluate the site using the Tier 1 Screening Criteria.

(1) If all Tier 1 Screening Criteria have been met, the Executive Secretary shall evaluate the site for No Further Action determination.

(2) If any of the Tier 1 Screening Criteria have not been met owners and operators shall proceed as described below.

(i) Owners and operators shall conduct a site investigation to provide complete information to the Executive Secretary regarding the factors outlined in R311-211-5(c) and 40 CFR Part 280.

(ii) When the site investigation is complete, owners and operators may propose for the evaluation and approval of the Executive Secretary site-specific cleanup standards based upon an analysis of the factors outlined in R311-211-5(c). Alternatively, the owners and operators may propose for the approval of the Executive Secretary the Initial Screening Levels established in R311-211-6(a) as the site-specific cleanup standards.

(iii) A partial corrective action approach may be approved by the Executive Secretary prior to completing the site investigation. However, if corrective action is implemented in separate phases, the Executive Secretary will not make a No Further Action determination until all factors outlined in R311-211-5(c) are evaluated.

(iv) Owners and operators may then propose and conduct corrective action approved by the Executive Secretary to attempt to reach the approved site-specific cleanup standards. If the owners and operators demonstrate that the approved site-specific cleanup standards have been met and maintained based upon sampling at intervals and for a period of time approved by the Executive Secretary, the Executive Secretary shall evaluate the site for No Further Action determination.

(v) If the owners and operators do not make progress toward reaching site-specific cleanup standards after conducting the approved corrective action, the Executive Secretary may require the owners and operators to submit an amended corrective action plan or an amended site-specific cleanup standards proposal and analysis of the factors outlined in R311-211-5(c) for the Executive Secretary's approval. The Executive Secretary may also require further investigation to fully define the extent and degree of the contamination if the passage of time or other factors creates the possibility that existing data may no longer be reliable.

R311-211-7. Significance Level.

(a) Where contamination is identified that is below applicable MCLs, water classification standards, or air quality standards or where applicable standards do not exist for either the parameter in question or the environmental media in which the contamination is found, the cleanup standard shall be established using R311-211-3 and will be set between background and the observed level of contamination. Should it be determined that the observed level of contamination will be allowed to remain, this becomes the significance level.

(b) At any time, should continued monitoring identify contamination above the significance level, the criteria of R311-211-3 will be reapplied in connection with R311-211-4 to re-evaluate the need for corrective action and determine an appropriate cleanup standard.

R311. Environmental Quality, Environmental Response and Remediation.**R311-212. Administration of the Petroleum Storage Tank Loan Fund.****R311-212-1. Definitions.**

Definitions are found in Section R311-200.

R311-212-2. Loan Application Submittal.

(a) Application for a loan shall be made on forms incorporated in Section R311-212-10, in accordance with Subsection 19-6-405.3(7). Loan applications shall be accepted during application periods designated by the Executive Secretary.

(b) As long as loan funds are available at least one application period shall be designated each fiscal year. Additional funds available through repayment of existing loans shall be loaned according to priorities from the most recent application period.

(c) Applications must be received by the Executive Secretary by 5:00 p.m. on the last day of a given application period.

(d) Loan applications received outside the application period shall be invalid.

R311-212-3. Eligibility Review.

(a) The Executive Secretary shall determine if the applicant meets the eligibility criteria stated in Subsections 19-6-405.3(3), 19-6-405.3(4), 19-6-405.3(5) and 19-6-405.3(6).

(b) To meet the eligibility requirements of 19-6-405.3(4) the applicant must, for all facilities for which the applicant requests a loan, demonstrate current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks, or must be able to achieve compliance with the loan proceeds.

(c) To meet the eligibility requirements of 19-6-405.3(4) the applicant must meet the following for all facilities owned or operated by the applicant for which the applicant does not request a loan:

(1) The applicant has demonstrated current compliance with all state and federal UST laws, rules and regulations, including compliance with all requirements for remediation of facilities with leaking underground storage tanks;

(2) All regulated underground petroleum storage tanks owned by the applicant have met the requirements of Section 19-6-412(2) and have a current certificate of compliance;

(3) The applicant has paid all underground storage tank registration fees, interest and penalties which have been assessed; and

(4) The applicant has paid all applicable petroleum storage tank fees, interest and penalties which have been assessed.

(d) To meet the requirements of Section 19-6-405.3(3), the loan request must be for the purpose of:

(1) Upgrading or replacing existing petroleum USTs to meet requirements of 40 CFR 280.21;

(2) Installing a leak detection monitoring system; or

(3) Permanently closing USTs. If an applicant requests a loan for closing USTs which will be replaced by above-ground storage tanks, the loan, if approved, will be only for closing the USTs. The security pledged by the applicant for a loan to replace USTs with above-ground storage tanks shall be subject to the limitations in R311-212-

6.

- (e) The Executive Secretary shall notify the applicant in writing of the status of the eligibility review.

R311-212-4. Prioritization of Loan Applications.

(a) When determined by the Executive Secretary to be necessary, all applications received during a designated application period shall be prioritized by total points assigned. Ten points shall be given for each item that applies to the applicant or the facility for which the loan is requested:

(1) The applicant has less than \$1,000,000 annual gross income and fewer than five full-time employee equivalents and is not owned or operated by any person not meeting the income and employee criteria.

(2) The applicant's income is derived solely from operations at UST facilities.

(3) The applicant owns or operates no more than two facilities.

(4) The facility is located in a U.S. Census Bureau population unit containing fewer than 5,000 people.

(5) There are no more than three operating retail outlets selling motor fuel within 15 miles road distance in all directions.

(6) Loan proceeds will be used solely for replacing or upgrading USTs.

(7) All USTs at the facility are greater than 15 years old.

(b) One point shall be given for each road mile of distance from the facility to the nearest operating retail outlet selling motor fuel, to a maximum of 30 points.

(c) Applications which receive the same number of points shall be sub-prioritized according to the date postmarked or the date delivered to the Executive Secretary by any other method.

(d) Applications shall remain in priority order regardless of availability of funds until a new application period is declared. When a new application period begins, priority order of applications which have not been reviewed terminates. An applicant whose application has not been reviewed or an applicant whose application has not been approved because the applicant has not satisfied the requirements of Subsections 19-6-405.3(3) through (6), loses eligibility to apply for a loan and must submit a new application in the subsequent period to be considered for a loan in that period.

R311-212-5. Loan Application Review.

(a) The applicant shall ensure that the loan application is complete. The completed application with supporting documents shall contain all information required by the application. If the applicant does not submit a complete application within 60 days of eligibility approval, the applicant's eligibility approval shall be forfeited, and the applicant must re-apply.

(b) All costs incurred in processing the application including appraisals, title reports, or UCC-1 releases shall be the responsibility of and paid for by the applicant. The Executive Secretary may require payment of costs in advance. The Executive Secretary shall not reimburse costs which have been expended, even if the loan fails to close, regardless of the reason.

(c) The review and approval of the application shall be based on information provided by the applicant, and:

(1) review of any and all records and documents on file;

(2) verification of any and all information provided by the applicant;

(3) review of credit worthiness and security pledged; and

(4) review of a site construction work plan.

(d) The Executive Secretary shall notify the applicant in writing of the status of the application when the review is complete.

(e) The applicant must close the loan within 30 days after the Executive Secretary mails the loan documents for the applicant's signature. If the applicant fails to close the loan within this time period, the approval is forfeited and the applicant must re-apply. An exception to the 30 day period may be granted by the Executive Secretary if the closing is delayed due to circumstances beyond the applicant's control.

R311-212-6. Security for Loans.

(a) When an applicant applies for a loan of \$15,000 or more, the loan applicant must pledge for security personal or real property which meets or exceeds the following criteria:

- (1) The loan amount may not be greater than 80 percent of the value of the applicant's equity in the security for cases where the Department obtains a first mortgage position, or
- (2) The loan amount may not be greater than 60 percent of the value of the applicant's equity in the security for cases where the Department obtains a second mortgage position.
- (b) The applicant shall provide acceptable documentation of the value of the property to be used as security using:
 - (1) a current written appraisal, performed by a State of Utah certified appraiser;
 - (2) a current county tax assessment notice, or
 - (3) other documentation acceptable to the Executive Secretary.
- (c) A title report on all real property and a UCC-1 clearance on all personal property used as security shall be submitted to the Executive Secretary by a title company or appropriate professional person approved by the Executive Secretary.
- (d) When the title report indicates an existing lien or encumbrance on real property to be used as security, the existing lien holders may subordinate their interest in favor of the Department. The Department shall accept no less than a second mortgage position on real property pledged for loan security.
- (e) Whenever a corporation seeks a loan, its principals must guarantee the loan personally.
- (f) The applicant must provide a complete financial statement with cash flow projections for debt service.
- (g) Above ground storage tanks and real property on which they are located shall not be acceptable as security.
- (h) Underground storage tanks and the real property on which they are located shall not be acceptable as security unless:
 - (1) The UST facility offered for security has not had a petroleum release which has not been properly remediated; and
 - (2) The applicant provides documentation to demonstrate the UST facility is currently in compliance with the loan eligibility requirements set forth in R311-212-3.
- (i) If a loan is made without security, the maximum loan repayment period shall be five years.

R311-212-7. Procedure for Making Loans.

- (a) Loan funds shall be obligated after all documents to secure a loan are complete, processed, and appropriately signed by the applicant and the Executive Secretary.
- (b) Loan proceeds shall be disbursed to the applicant after closing documents are processed, work at the site is completed, and all paperwork and notifications have been received by the Executive Secretary. If the loan amount exceeds the allowable project costs, the Executive Secretary may credit any difference to the applicant's account rather than disbursing excess proceeds to the applicant.
- (c) Loan proceeds shall not be used to pay underground storage tank registration fees, penalties, or interest assessed under Section 19-6-408 or petroleum storage tank fees, penalties, or interest assessed under Section 19-6-411.
- (d) Loans shall not be made for work which is performed before the applicant's loan application is approved and the loan is closed.

R311-212-8. Servicing the Loans.

- (a) The Executive Secretary shall establish a loan repayment schedule for each borrower based on the financial situation and income circumstances of the borrower and within the term of loans allowed by Subsection 19-6-405.3(6)(e). Loans shall be amortized with equal payment amounts and payments shall be of such amount to pay all interest and principal in full.
- (b) The initial installment payment is due on a date established by the Executive Secretary. Subsequent installment payments are due on the first day of each month. A notice of payment and due date shall be sent for each subsequent payment. Non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.
- (c) The Executive Secretary shall apply loan payments received first to penalty, next to interest and then to principal.
- (d) Loan payments may be made in advance or the remaining principal balance of the loan may be paid in

full at any time without penalty.

(e) Notices of late payment penalty assessed with amounts of penalty and the total payment due shall be sent to the borrower.

(f) The penalty for late loan payments shall be 10 percent of the payment due. The penalty shall be assessed and payable on payments received by the Executive Secretary more than five days after the due date. A penalty shall be assessed only once on a given late payment. Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Executive Secretary by methods other than the U.S. Postal Service. If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.

(g) Notice of loans paid in full shall be sent after all penalties, interest and principal have been paid.

(h) Releases of the Executive Secretary's interest in security shall be prepared and sent to the borrower or filed for public notice as applicable.

R311-212-9. Recovering on Defaulted Loans.

(a) Loans may be considered in default when two consecutive payments are past due by 30 days or more, when the applicant's ability to receive payments for claims against the fund lapses, or if the certificate of compliance lapses or is revoked. Lapsing under section R311-206-7(e) shall not be considered as grounds for default for USTs which are permanently closed.

(b) The Executive Secretary may declare the full amount of the defaulted loan, penalty, and interest immediately due.

(c) The Executive Secretary need not give notice of default prior to declaring the full amount due and payable.

(d) The borrower shall be liable for attorney's fees and collection costs for defaulted loans whether incurred before or after court action.

R311-212-10. Forms.

(a) The forms dated and listed below, on file with the Department, are incorporated by reference as part of Section R311-212, and shall be used by the Executive Secretary for making loans.

- (1) Loan Application version 04/02/04
- (2) Balance Sheet version 04/02/04
- (3) Loan Commitment Agreement version 06/15/95
- (4) Corporate Authorization version 06/15/95
- (5) Promissory Note version 06/15/95
- (6) Extension and Modification Agreement version 06/15/95
- (7) Security Agreement version 06/15/95
- (8) Hypothecation Agreement 06/15/95
- (9) General Pledge Agreement 06/15/95
- (10) Assignment 06/15/95
- (11) Assignment of Account 06/15/95
- (12) Trust Deed
- (i) property with underground storage tanks version 06/15/95; or
- (ii) property without underground storage tanks version 06/15/95.

(b) The Executive Secretary may require or allow the use of other forms that are consistent with these rules as necessary for the loan approval process. The Executive Secretary may change these forms for administrative purposes provided the revised forms remain consistent with the substantive provisions of the adopted forms.

R311-212-11. Rules in Effect.

(a) The rules in effect on the closing date of the loan and the forms signed by the parties shall govern the parties.

19-6-401. Short title.

This part is known as the "Underground Storage Tank Act."

19-6-402. Definitions.

As used in this part:

(1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate a release from an underground storage tank or petroleum storage tank, or to limit or reduce, mitigate, or eliminate the damage caused by that release.

(2) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.

(3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by any person.

(4) "Certificate of compliance" means a certificate issued to a facility by the executive secretary:

(a) demonstrating that an owner or operator of a facility containing one or more petroleum storage tanks has met the requirements of this part; and

(b) listing all tanks at the facility, specifying which tanks may receive petroleum and which tanks have not met the requirements for compliance.

(5) "Certificate of registration" means a certificate issued to a facility by the executive secretary demonstrating that an owner or operator of a facility containing one or more underground storage tanks has:

(a) registered the tanks; and

(b) paid the annual underground storage tank fee.

(6) (a) "Certified underground storage tank consultant" means any person who:

(i) meets the education and experience standards established by the board under Subsection 19-6-403(1)(a)(vi) in order to provide or contract to provide information, opinions, or advice relating to underground storage tank management, release abatement, investigation, corrective action, or evaluation for a fee, or in connection with the services for which a fee is charged; and

(ii) has submitted an application to the board and received a written statement of certification from the board.

(b) "Certified underground storage tank consultant" does not include:

(i) an employee of the owner or operator of the underground storage tank, or an employee of a business operation that has a business relationship with the owner or operator of the underground storage tank, and that markets petroleum products or manages underground storage tanks; or

(ii) persons licensed to practice law in this state who offer only legal advice on underground storage tank management, release abatement, investigation, corrective action, or evaluation.

(7) "Closed" means an underground storage tank no longer in use that has been:

(a) emptied and cleaned to remove all liquids and accumulated sludges; and

(b) either removed from the ground or filled with an inert solid material.

(8) "Corrective action plan" means a plan for correcting a release from a petroleum storage tank that includes provisions for all or any of the following:

(a) cleanup or removal of the release;

(b) containment or isolation of the release;

(c) treatment of the release;

(d) correction of the cause of the release;

(e) monitoring and maintenance of the site of the release;

(f) provision of alternative water supplies to persons whose drinking water has become contaminated by the release; or

(g) temporary or permanent relocation, whichever is determined by the executive secretary to be more cost-effective, of persons whose dwellings have been determined by the executive secretary to be no longer habitable due to the release.

(9) "Costs" means any monies expended for:

(a) investigation;

(b) abatement action;

- (c) corrective action;
- (d) judgments, awards, and settlements for bodily injury or property damage to third parties;
- (e) legal and claims adjusting costs incurred by the state in connection with judgments, awards, or settlements for bodily injury or property damage to third parties; or
- (f) costs incurred by the state risk manager in determining the actuarial soundness of the fund.
- (10) "Covered by the fund" means the requirements of Section 19-6-424 have been met.
- (11) "Dwelling" means a building that is usually occupied by a person lodging there at night.
- (12) "Enforcement proceedings" means a civil action or the procedures to enforce orders established by Section 19-6-425.
- (13) "Executive secretary" means the executive secretary of the board.
- (14) "Facility" means all underground storage tanks located on a single parcel of property or on any property adjacent or contiguous to that parcel.
- (15) "Fund" means the Petroleum Storage Tank Trust Fund created in Section 19-6-409.
- (16) "Loan fund" means the Petroleum Storage Tank Loan Fund created in Section 19-6-405.3.
- (17) "Operator" means any person in control of or who is responsible on a daily basis for the maintenance of an underground storage tank that is in use for the storage, use, or dispensing of a regulated substance.
- (18) "Owner" means:
 - (a) in the case of an underground storage tank in use on or after November 8, 1984, any person who owns an underground storage tank used for the storage, use, or dispensing of a regulated substance; and
 - (b) in the case of any underground storage tank in use before November 8, 1984, but not in use on or after November 8, 1984, any person who owned the tank immediately before the discontinuance of its use for the storage, use, or dispensing of a regulated substance.
- (19) "Petroleum" includes crude oil or any fraction of crude oil that is liquid at 60 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute.
- (20) "Petroleum storage tank" means a tank that:
 - (a) (i) is underground;
 - (ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6991c, et seq.; and
 - (iii) contains petroleum; or
 - (b) is a tank that the owner or operator voluntarily submits for participation in the Petroleum Storage Tank Trust Fund under Section 19-6-415.
- (21) "Petroleum Storage Tank Restricted Account" means the account created in Section 19-6-405.5.
- (22) "Program" means the Environmental Assurance Program under Section 19-6-410.5.
- (23) "Property damage" means physical injury to or destruction of tangible property including loss of use of that property.
- (24) "Regulated substance" means petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
- (25) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or petroleum storage tank. The entire release is considered a single release.
- (26) (a) "Responsible party" means any person who:
 - (i) is the owner or operator of a facility;
 - (ii) owns or has legal or equitable title in a facility or an underground storage tank;
 - (iii) owned or had legal or equitable title in the facility at the time any petroleum was received or contained at the facility;
 - (iv) operated or otherwise controlled activities at the facility at the time any petroleum was received or contained at the facility; or
 - (v) is an underground storage tank installation company.
- (b) "Responsible party" as defined in Subsections (26)(a)(i), (ii), and (iii) does not include:
 - (i) any person who is not an operator and, without participating in the management of a facility and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership:
 - (A) primarily to protect his security interest in the facility; or
 - (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan;

or

(ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).

(c) The exemption created by Subsection (b)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.

(d) The terms and activities "indicia of ownership," "primarily to protect a security interest," "participation in management," and "security interest" under this part are in accordance with 40 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).

(e) The terms "participate in management" and "indicia of ownership" as defined in 40 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to the fiduciaries listed in Subsection (26)(b)(i)(B).

(27) "Soil test" means a test, established or approved by board rule, to detect the presence of petroleum in soil.

(28) "State cleanup appropriation" means the money appropriated by the Legislature to the department to fund the investigation, abatement, and corrective action regarding releases not covered by the fund.

(29) "Underground storage tank" means any tank regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

(a) a petroleum storage tank;

(b) underground pipes and lines connected to a storage tank; and

(c) any underground ancillary equipment and containment system.

(30) "Underground storage tank installation company" means any person, firm, partnership, corporation, governmental entity, association, or other organization who installs underground storage tanks.

(31) "Underground storage tank installation company permit" means a permit issued to an underground storage tank installation company by the executive secretary.

(32) "Underground storage tank technician" means a person employed by and acting under the direct supervision of a certified underground storage tank consultant to assist in carrying out the functions described in Subsection (6)(a).

19-6-402.5. Retroactive effect.

(1) The Legislature finds the definitions in this part prior to the passage of this act did not clearly set forth procedures for identifying responsible parties and interfered with effective allocation of costs of cleanup as required by this part.

(2) It is the intent of the Legislature that this act provides clarification regarding procedures for allocating responsibility for the costs of investigation, abatement, and corrective action as required under this part.

(3) It is the intent of the Legislature that this part imposes liability as determined under this part retroactively to any release of petroleum or any other regulated substance subject to investigation, abatement, or corrective action under this part.

19-6-403. Powers and duties of board.

The board shall regulate an underground storage tank or petroleum storage tank by:

(1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, making rules that:

(a) provide for the:

(i) certification of an installer, inspector, tester, or remover;

(ii) registration of a tank;

(iii) administration of the petroleum storage tank program;

(iv) format of and required information in a record kept by a tank owner or operator who is participating in the fund;

(v) voluntary participation in the fund for:

(A) an above ground petroleum storage tank; and

(B) a tank;

(I) exempt from regulation under 40 C.F.R., Part 280, Subpart (B); and

- (II) specified in Section 19-6-415; and
- (vi) certification of an underground storage tank consultant including:
 - (A) a minimum education or experience requirement; and
 - (B) a recognition of the educational requirement of a professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act, as meeting the education requirement for certification;
- (b) adopt the requirements for an underground storage tank contained in:
 - (i) the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991, et seq., as may be amended in the future; and
 - (ii) an applicable federal requirement authorized by the federal law referenced in Subsection (1)(b)(i); and
 - (c) comply with the requirements of the Solid Waste Disposal Act, Subchapter IX, 42 U.S.C. Sec. 6991c, et seq., as may be amended in the future, for the state's assumption of primacy in the regulation of an underground storage tank; and
- (2) applying the provisions of this part.

19-6-404. Powers and duties of executive secretary.

- (1) The executive secretary shall administer the petroleum storage tank program established in this part.
- (2) As necessary to meet the requirements or carry out the purposes of this part, the executive secretary may:
 - (a) advise, consult, and cooperate with other persons;
 - (b) employ persons;
 - (c) authorize a certified employee or a certified representative of the department to conduct facility inspections and reviews of records required to be kept by this part and by rules made under this part;
 - (d) encourage, participate in, or conduct studies, investigation, research, and demonstrations;
 - (e) collect and disseminate information;
 - (f) enforce rules made by the board and any requirement in this part by issuing notices and orders;
 - (g) review plans, specifications, or other data;
 - (h) represent the state in all matters pertaining to interstate underground storage tank management and control, including, with the concurrence of the executive director, entering into interstate compacts and other similar agreements;
 - (i) enter into contracts or agreements with political subdivisions for the performance of any of the department's responsibilities under this part if:
 - (i) the contract or agreement is not prohibited by state or federal law and will not result in a loss of federal funding; and
 - (ii) the executive secretary determines that:
 - (A) the political subdivision is willing and able to satisfactorily discharge its responsibilities under the contract or agreement; and
 - (B) the contract or agreement will be practical and effective;
 - (j) take any necessary enforcement action authorized under this part;
 - (k) require an owner or operator of an underground storage tank to:
 - (i) furnish information or records relating to the tank, its equipment, and contents;
 - (ii) monitor, inspect, test, or sample the tank, its contents, and any surrounding soils, air, or water; or
 - (iii) provide access to the tank at reasonable times;
 - (l) take any abatement, investigative, or corrective action as authorized in this part; and
 - (m) enter into agreements or issue orders to apportion percentages of liability of responsible parties under Section 19-6-424.5.
- (3) Except as otherwise provided in Subsection 19-6-414(3), appeals of decisions made by the executive secretary under this part shall be made to the board.

19-6-405.3. Creation of Petroleum Storage Tank Loan Fund -- Purposes -- Loan eligibility -- Loan restrictions -- Rulemaking.

- (1) There is created the revolving loan fund entitled the Petroleum Storage Tank Loan Fund.

- (2) The sources of monies for the loan fund are:
 - (a) appropriations to the loan fund;
 - (b) principal and interest received from the repayment of loans made by the executive secretary under Subsection (3); and
 - (c) all investment income derived from money in the fund.
- (3) The executive secretary may loan, in accordance with this section, monies available in the loan fund to persons to be used for:
 - (a) upgrading petroleum storage tanks and associated piping with corrosion protection, or spill and overfill prevention equipment as necessary to meet the federal deadline required under 40 CFR 280.21;
 - (b) replacing underground storage tanks; or
 - (c) permanently closing underground storage tanks.
- (4) A person may apply to the executive secretary for a loan under Subsection (3) if all tanks owned or operated by that person are in substantial compliance with all state and federal requirements or will be brought into substantial compliance using money from the loan fund.
- (5) The executive secretary shall consider loan applications under Subsection (4) to meet the following objectives:
 - (a) support availability of gasoline in rural parts of the state;
 - (b) support small businesses; and
 - (c) reduce the threat of a petroleum release endangering the environment.
- (6) Loans made under this section shall:
 - (a) be for no more than \$45,000 for all tanks at any one facility;
 - (b) be for no more than \$15,000 per tank;
 - (c) be for no more than 80% of the total cost of:
 - (i) upgrading a tank and associated piping to meet requirements of 40 CFR 280.21;
 - (ii) replacing the underground storage tank; or
 - (iii) permanently closing the underground storage tank;
 - (d) have a fixed annual interest rate of 3%;
 - (e) have a term no longer than ten years;
 - (f) be made on the condition the loan applicant obtains adequate security for the loan as established by board rule under Subsection (7); and
 - (g) comply with rules made by the board under Subsection (7).
- (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing:
 - (a) form, content, and procedure for loan applications;
 - (b) criteria and procedures for prioritizing loan applications;
 - (c) requirements and procedures for securing loans;
 - (d) procedures for making the loans;
 - (e) procedures for administering and ensuring repayment of loans, including late payment penalties; and
 - (f) procedures for recovering on defaulted loans.
- (8) The decisions of the executive secretary in loaning money from the loan fund and otherwise administering the loan fund are not subject to Title 63G, Chapter 4, Administrative Procedures Act.
- (9) The Legislature shall appropriate monies for administration of the loan fund to the department from the loan fund.
- (10) The executive secretary may enter into agreements with public entities or private organizations to perform any tasks associated with administration of the loan fund.

19-6-405.5. Creation of restricted account.

- (1) There is created in the General Fund a restricted account known as the Petroleum Storage Tank Restricted Account.
- (2) All penalties and interest imposed under this part shall be deposited in this account, except as provided in Section 19-6-410.5. Specified program funds under this part that are unexpended at the end of the fiscal year lapse into

this account.

(3) The Legislature shall appropriate the money in the account to the department for the costs of administering the petroleum storage tank program under this part.

19-6-405.7. Petroleum Storage Tank Cleanup Fund -- Revenue and purposes.

(1) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank Cleanup Fund," which is referred to in this section as the cleanup fund.

(2) The cleanup fund sources of revenue are:

- (a) any voluntary contributions received by the department for the cleanup of facilities;
- (b) legislative appropriations made to the cleanup fund; and
- (c) costs recovered under this part.

(3) The cleanup fund shall earn interest, which shall be deposited in the cleanup fund.

(4) The executive secretary may use the cleanup fund monies for administration, investigation, abatement action, and preparing and implementing a corrective action plan regarding releases not covered by the Petroleum Storage Tank Trust Fund created in Section 19-6-409.

19-6-407. Underground storage tank registration -- Change of ownership or operation -- Civil penalty.

(1) (a) Each owner or operator of an underground storage tank shall register the tank with the executive secretary if the tank:

- (i) is in use; or
- (ii) was closed after January 1, 1974.

(b) If a new person assumes ownership or operational responsibilities for an underground storage tank, that person shall inform the executive secretary of the change within 30 days after the change occurs.

(c) Each installer of an underground storage tank shall notify the executive secretary of the completed installation within 60 days following the installation of an underground storage tank.

(2) The executive secretary may issue a notice of agency action assessing a civil penalty in the amount of \$1,000 if an owner, operator, or installer, of a petroleum or underground storage tank fails to register the tank or provide notice as required in Subsection (1).

(3) The penalties collected under authority of this section shall be deposited in the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

19-6-408. Underground storage tank registration fee -- Processing fee for tanks not in the program.

(1) The department may assess an annual underground storage tank registration fee against owners or operators of underground storage tanks that have not been closed. These fees shall be:

- (a) billed per facility;
- (b) due on July 1 annually;
- (c) deposited with the department as dedicated credits;
- (d) used by the department for the administration of the underground storage tank program outlined in this part;

and

(e) established under Section 63J-1-303.

(2) (a) In addition to the fee under Subsection (1), an owner or operator who elects to demonstrate financial assurance through a mechanism other than the Environmental Assurance Program shall pay a processing fee of:

(i) for fiscal year 1997-98, \$1,000 for each financial assurance mechanism document submitted to the division for review; and

(ii) on and after July 1, 1998, a processing fee established under Section 63J-1-303.

(b) If a combination of financial assurance mechanisms is used to demonstrate financial assurance, the fee under Subsection (2)(a) shall be paid for each document submitted.

(c) As used in this Subsection (2), "financial assurance mechanism document" may be a single document that covers more than one facility through a single financial assurance mechanism.

(3) Any funds provided for administration of the underground storage tank program under this section that are not expended at the end of the fiscal year lapse into the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

(4) The executive secretary shall provide all owners or operators who pay the annual underground storage tank registration fee a certificate of registration.

(5) (a) The executive secretary may issue a notice of agency action assessing a civil penalty of \$1,000 per facility if an owner or operator of an underground storage tank facility fails to pay the required fee within 60 days after the July 1 due date.

(b) The registration fee and late payment penalty accrue interest at 12% per annum.

(c) If the registration fee, late payment penalty, and interest accrued under this Subsection (5) are not paid in full within 60 days after the July 1 due date any certificate of compliance issued prior to the July 1 due date lapses. The executive secretary may not reissue the certificate of compliance until full payment under this Subsection (5) is made to the department.

(d) The executive secretary may waive any penalty assessed under this Subsection (5) if no fuel has been dispensed from the tank on or after July 1, 1991.

19-6-409. Petroleum Storage Tank Trust Fund created -- Source of revenues.

(1) (a) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank Trust Fund."

(b) The sole sources of revenues for the fund are:

(i) petroleum storage tank fees under Section 19-6-411;

(ii) underground storage tank installation company permit fees under Section 19-6-411;

(iii) the environmental assurance fee and any penalties, paid under Section 19-6-410.5; and

(iv) any interest accrued on these revenues.

(c) Interest earned on fund monies shall be deposited into the fund.

(2) Fund monies may be used to pay:

(a) costs as provided in Section 19-6-419; and

(b) for the administration of the fund and the environmental assurance program and fee under Section 19-6-410.5.

(3) Costs for the administration of the fund and the environmental assurance fee shall be appropriated by the Legislature.

(4) The executive secretary may expend monies from the fund for:

(a) legal and claims adjusting costs incurred by the state in connection with claims, judgments, awards, or settlements for bodily injury or property damage to third parties;

(b) costs incurred by the state risk manager in determining the actuarial soundness of the fund; and

(c) other costs as provided in this part.

19-6-410.5. Environmental assurance program -- Participant fee.

(1) As used in this section:

(a) "Cash balance" means cash plus investments and current accounts receivable minus current accounts payable, excluding the liabilities estimated by the state risk manager.

(b) "Commission" means the State Tax Commission, as defined in Section 59-1-101.

(2) (a) There is created an Environmental Assurance Program.

(b) The program shall provide to participating owners and operators, upon payment of the fee imposed under Subsection (4), assistance with satisfying the financial responsibility requirements of 40 CFR, Part 280, Subpart H, by providing funds from the Petroleum Storage Tank Trust Fund established in Section 19-6-409, subject to the terms and conditions of Chapter 6, Part 4, Underground Storage Tank Act, and rules implemented under that part.

(3) (a) Subject to Subsection (3)(b), participation in the program is voluntary.

(b) Each owner and operator seeking to satisfy financial responsibility requirements through the program shall use the program for all petroleum underground storage tanks that the owner or operator owns or operates.

(4) (a) There is assessed an environmental assurance fee of 1/2 cent per gallon on the first sale or use of petroleum products in the state.

(b) The environmental assurance fee and any other revenue collected under this section shall be deposited in the Petroleum Storage Tank Trust Fund created in Section 19-6-409 and used solely for the purposes listed in Section 19-6-409.

(5) (a) The commission shall collect the environmental assurance fee and any penalties and interest imposed under this section.

(b) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules to establish:

- (i) the method of payment of the environmental assurance fee;
- (ii) the procedure for reimbursement or exemption of owners or operators who do not participate in the program, including owners and operators of above ground storage tanks; and
- (iii) the procedure for confirming with the department those owners and operators who qualify for reimbursement or exemption under Subsection (5)(b)(ii).

(c) The commission may retain an amount not to exceed 2.5% of fees collected under this section for the cost to it of rendering its services.

(6) (a) The person or entity responsible for payment of the fee under this section shall, by the last day of the month following the month in which the sale occurs:

- (i) complete and submit the form prescribed by the commission; and
- (ii) pay the fee to the commission.

(b) (i) The penalties and interest for failure to file the form or to pay the environmental assurance fee are the same as the penalties and interest under Sections 59-1-401 and 59-1-402.

(ii) The commission shall deposit penalties and interest collected under this section in the Petroleum Storage Tank Trust Fund.

(c) The commission shall report to the department any person or entity who is delinquent in payment of the fee under this section.

(7) (a) (i) If the cash balance of the Petroleum Storage Tank Trust Fund on June 30 of any year exceeds \$20,000,000, the assessment of the environmental assurance fee as provided in Subsection (4) is reduced to 1/4 cent per gallon beginning November 1.

(ii) The reduction shall remain in effect until modified by the Legislature in a general or special session.

(b) The commission shall determine the cash balance of the fund each year as of June 30.

(c) Before September 1 of each year, the department shall provide the commission with the accounts payable of the fund as of June 30.

19-6-411. Petroleum storage tank fee for program participants.

(1) In addition to the underground storage tank registration fee paid in Section 19-6-408, the owner or operator of a petroleum storage tank who elects to participate in the environmental assurance program under Section 19-6-410.5 shall also pay an annual petroleum storage tank fee to the department for each facility as follows:

(a) on and after July 1, 1990, through June 30, 1993, an annual fee of:

(i) \$250 for each tank:

- (A) located at a facility engaged in petroleum production, refining, or marketing; or
- (B) with an annual monthly throughput of more than 10,000 gallons; and

(ii) \$125 for each tank:

- (A) not located at a facility engaged in petroleum production, refining, or marketing; and
- (B) with an annual monthly throughput of 10,000 gallons or less;

(b) on and after July 1, 1993, through June 30, 1994, an annual fee of:

(i) \$150 for each tank:

- (A) located at a facility engaged in petroleum production, refining, or marketing; or
- (B) with an average monthly throughput of more than 10,000 gallons; and

(ii) \$75 for each tank:

(A) not located at a facility engaged in petroleum production, refining, or marketing; and

(B) with an average monthly throughput of 10,000 gallons or less; and

(c) on and after July 1, 1994, an annual fee of:

(i) \$50 for each tank in a facility with an annual facility throughput rate of 400,000 gallons or less;

(ii) \$150 for each tank in a facility with an annual facility throughput rate of more than 400,000 gallons; and

(iii) \$150 for each tank in a facility regarding which:

(A) the facility's throughput rate is not reported to the department within 30 days after the date this throughput information is requested by the department; or

(B) the owner or operator elects to pay the fee under this subsection, rather than report under Subsection (1)(c)(i) or (ii); and

(d) on and after July 1, 1998, for any new tank:

(i) which is installed to replace an existing tank at an existing facility, any annual petroleum storage tank fee paid for the current fiscal year for the existing tank is applicable to the new tank; and

(ii) installed at a new facility or at an existing facility, which is not a replacement for another existing tank, the fees are as provided in Subsection (1)(c) of this section.

(2) (a) As a condition of receiving a permit and being eligible for benefits under Section 19-6-419 from the Petroleum Storage Tank Trust Fund, each underground storage tank installation company shall pay to the department the following fees to be deposited in the fund:

(i) an annual fee of:

(A) \$2,000 per underground storage tank installation company if the installation company has installed 15 or fewer underground storage tanks within the 12 months preceding the fee due date; or

(B) \$4,000 per underground storage tank installation company if the installation company has installed 16 or more underground storage tanks within the 12 months preceding the fee due date; and

(ii) \$200 for each underground storage tank installed in the state, to be paid prior to completion of installation.

(b) The board shall make rules specifying which portions of an underground storage tank installation shall be subject to the permitting fees when less than a full underground storage tank system is installed.

(3) (a) Fees under Subsection (1) are due on or before July 1 annually.

(b) If the department does not receive the fee on or before July 1, the department shall impose a late penalty of \$60 per facility.

(c) (i) The fee and the late penalty accrue interest at 12% per annum.

(ii) If the fee, the late penalty, and all accrued interest are not received by the department within 60 days after July 1, the eligibility of the owner or operator to receive payments for claims against the fund lapses on the 61st day after July 1.

(iii) In order for the owner or operator to reinstate eligibility to receive payments for claims against the fund, the owner or operator shall meet the requirements of Subsection 19-6-428(3).

(4) (a) (i) Fees under Subsection (2)(a)(i) are due on or before July 1 annually. If the department does not receive the fees on or before July 1, the department shall impose a late penalty of \$60 per installation company. The fee and the late penalty accrue interest at 12% per annum.

(ii) If the fee, late penalty, and all accrued interest due are not received by the department within 60 days after July 1, the underground storage tank installation company's permit and eligibility to receive payments for claims against the fund lapse on the 61st day after July 1.

(b) (i) Fees under Subsection (2)(a)(ii) are due prior to completion of installation. If the department does not receive the fees prior to completion of installation, the department shall impose a late penalty of \$60 per facility. The fee and the late penalty accrue interest at 12% per annum.

(ii) If the fee, late penalty, and all accrued interest are not received by the department within 60 days after the underground storage tank installation is completed, eligibility to receive payments for claims against the fund for that tank lapse on the 61st day after the tank installation is completed.

(c) The executive secretary may not reissue the underground storage tank installation company permit until the fee, late penalty, and all accrued interest are received by the department.

(5) If the state risk manager determines the fees established in Subsections (1) and (2) and the environmental assurance fee established in Section 19-6-410.5 are insufficient to maintain the fund on an actuarially sound basis, he shall petition the Legislature to increase the petroleum storage tank and underground storage tank installation company

permit fees, and the environmental assurance fee to a level that will sustain the fund on an actuarially sound basis.

(6) The executive secretary may waive all or part of the fees required to be paid on or before May 5, 1997, for a petroleum storage tank under this section if no fuel has been dispensed from the tank on or after July 1, 1991.

(7) (a) Each petroleum storage tank or underground storage tank, for which payment of fees has been made and other requirements have been met to qualify for a certificate of compliance under this part, shall be issued a form of identification, as determined by the board under Subsection (7)(b).

(b) The board shall make rules providing for the identification, through a tag or other readily identifiable method, of petroleum storage tanks or underground storage tanks under Subsection (7)(a) that qualify for a certificate of compliance under this part.

19-6-412. Petroleum storage tank -- Certificate of compliance.

(1) (a) Beginning July 1, 1990, an owner or operator of a petroleum storage tank may obtain a certificate of compliance for the facility.

(b) Effective July 1, 1991, each owner or operator of a petroleum storage tank shall have a certificate of compliance for the facility.

(2) The executive secretary shall issue a certificate of compliance if:

(a) the owner or operator has a certificate of registration;

(b) the owner or operator demonstrates it is participating in the Environmental Assurance Program under Section 19-6-410.5, or otherwise demonstrates compliance with financial assurance requirements as defined by rule;

(c) all state and federal statutes, rules, and regulations have been substantially complied with; and

(d) all tank test requirements of Section 19-6-413 have been met.

(3) If the ownership of or responsibility for the petroleum storage tank changes, the certificate of compliance is still valid unless it has been revoked or has lapsed.

(4) The executive secretary may issue a certificate of compliance for a period of less than one year to maintain an administrative schedule of certification.

(5) The executive secretary shall reissue a certificate of compliance if the owner or operator of an underground storage tank has complied with the requirements of Subsection (2).

(6) If the owner or operator electing to participate in the program has a number of tanks in an area where the executive secretary finds it would be difficult to accurately determine which of the tanks may be the source of a release, the owner may only elect to place all of the tanks in the area in the program, but not just some of the tanks in the area.

19-6-413. Tank tightness test -- Actions required after testing.

(1) The owner or operator of any petroleum storage tank registered prior to July 1, 1991, must submit to the executive secretary the results of a tank tightness test conducted:

(a) on or after September 1, 1989, and prior to January 1, 1990, if the test meets requirements set by rule regarding tank tightness tests that were applicable during that period; or

(b) on or after January 1, 1990, and prior to July 1, 1991.

(2) The owner or operator of any petroleum storage tank registered on or after July 1, 1991, must submit to the executive secretary the results of a tank tightness test conducted within the six months before the tank was registered or within 60 days after the date the tank was registered.

(3) If the tank test performed under Subsection (1) or (2) shows no release of petroleum, the owner or operator of the petroleum storage tank shall submit a letter to the executive secretary at the same time the owner or operator submits the test results, stating that under customary business inventory practices standards, the owner or operator is not aware of any release of petroleum from the tank.

(4) (a) If the tank test shows a release of petroleum from the petroleum storage tank, the owner or operator of the tank shall:

(i) correct the problem; and

(ii) submit evidence of the correction to the executive secretary.

(b) When the executive secretary receives evidence from an owner or operator of a petroleum storage tank that

the problem with the tank has been corrected, the executive secretary shall:

- (i) approve or disapprove the correction; and
- (ii) notify the owner or operator that the correction has been approved or disapproved.

(5) The executive secretary shall review the results of the tank tightness test to determine compliance with this part and any rules adopted under the authority of Section 19-6-403.

(6) If the owner or operator of the tank is required by 40 C.F.R., Part 280, Subpart D, to perform release detection on the tank, the owner or operator shall submit the results of the tank tests in compliance with 40 C.F.R., Part 280, Subpart D.

19-6-414. Grounds for revocation of certificate of compliance and ineligibility for payment of costs from fund.

(1) If the executive secretary determines that any of the requirements of Subsection 19-6-412(2) and Section 19-6-413 have not been met, the executive secretary shall notify the owner or operator by certified mail that:

- (a) his certificate of compliance may be revoked;
- (b) if he is participating in the program, he is violating the eligibility requirements for the fund; and
- (c) he shall demonstrate his compliance with this part within 60 days after receipt of the notification or his

certificate of compliance will be revoked and if participating in the program he will be ineligible to receive payment for claims against the fund.

(2) If the executive secretary determines the owner's or operator's compliance problems have not been resolved within 60 days after receipt of the notification in Subsection (1), the executive secretary shall send written notice to the owner or operator that the owner's or operator's certificate of compliance is revoked and he is no longer eligible for payment of costs from the fund.

(3) Revocation of certificates of compliance may be appealed to the executive director.

19-6-415. Participation of exempt and above ground tanks.

(1) An underground storage tank exempt from regulation under 40 C.F.R., Part 280, Subpart A, may become eligible for payments from the Petroleum Storage Tank Trust Fund if it:

- (a) (i) is a farm or residential tank with a capacity of 1,100 gallons or less and is used for storing motor fuel for noncommercial purposes;
- (ii) is used for storing heating oil for consumptive use on the premises where stored; or
- (iii) is used for any oxygenate blending component for motor fuels;
- (b) complies with the requirements of Section 19-6-412;
- (c) meets other requirements established by rules made under Section 19-6-403; and
- (d) pays registration and tank fees and environmental assurance fees, equivalent to those fees outlined in Sections 19-6-408, 19-6-410.5, and 19-6-411.

(2) An above ground petroleum storage tank may become eligible for payments from the Petroleum Storage Tank Trust Fund if the owner or operator:

- (a) pays those fees that are equivalent to the registration and tank fees and environmental assurance fees under Sections 19-6-408, 19-6-410.5, and 19-6-411;
- (b) complies with the requirements of Section 19-6-412; and
- (c) meets other requirements established by rules made under Section 19-6-403.

19-6-415.5. State-owned underground tanks to participate in program.

Any underground storage tank owned or leased by the state of Utah and subject to the financial assurance requirements established by division rule shall participate in the program.

19-6-416. Restrictions on delivery of petroleum -- Civil penalty.

(1) After July 1, 1991, a person may not deliver petroleum to, place petroleum in, or accept petroleum for placement in a petroleum storage tank that is not identified in compliance with Subsection 19-6-411(7).

(2) Any person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in an underground storage tank in violation of Subsection (1) is subject to a civil penalty of not more than \$500 for each occurrence.

(3) The executive secretary shall issue a notice of agency action assessing a civil penalty of not more than \$500 against any person who delivers or accepts delivery of petroleum to a petroleum storage tank or places petroleum, including waste petroleum substances, in violation of Subsection (1) in a petroleum storage tank or underground storage tank.

(4) A civil penalty may not be assessed under this section against any person who in good faith delivers or places petroleum in a petroleum storage tank or underground storage tank that is identified in compliance with Subsection 19-6-411(7) and rules made under that subsection, whether or not the tank is in actual compliance with the other requirements of Section 19-6-411.

19-6-416.5. Restrictions on underground storage tank installation companies -- Civil penalty.

(1) After July 1, 1994, no individual or underground installation company may install an underground storage tank without having a valid underground storage tank installation company permit.

(2) Any individual or underground storage tank installation company who installs an underground storage tank in violation of Subsection (1) is subject to a civil penalty of \$500 per underground storage tank.

(3) The executive secretary shall issue a notice of agency action assessing a civil penalty of \$500 against any underground storage tank installation company or person who installs an underground storage tank in violation of Subsection (1).

19-6-417. Use of fund revenues to investigate certain releases from petroleum storage tank.

If the executive secretary is notified of or otherwise becomes aware of a release or suspected release of petroleum, he may expend revenues from the fund to investigate the release or suspected release if he has reasonable cause to believe the release is from a tank that is covered by the fund.

19-6-418. Recovery of costs by executive secretary.

(1) The executive secretary may recover:

(a) from a responsible party the proportionate share of costs the party is responsible for as determined under Section 19-6-424.5;

(b) any amount required to be paid by the owner under this part which the owner has not paid; and

(c) costs of collecting the amounts in Subsections (1)(a) and (1)(b).

(2) The executive secretary may pursue an action or recover costs from any other person if that person caused or substantially contributed to the release.

(3) All costs recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created in Section 19-6-405.7.

19-6-419. Costs covered by the fund -- Costs paid by owner or operator -- Payments to third parties -- Apportionment of costs.

(1) If all requirements of this part have been met and a release occurs from a tank that is covered by the fund, the costs per release shall be covered as provided under this section.

- (2) The responsible party shall pay:
 - (a) the first \$10,000 of costs; and
 - (b) (i) all costs over \$1,000,000, if the release was from a tank:
 - (A) located at a facility engaged in petroleum production, refining, or marketing; or
 - (B) with an average monthly facility throughput of more than 10,000 gallons; and
 - (ii) all costs over \$500,000, if the release was from a tank:
 - (A) not located at a facility engaged in petroleum production, refining, or marketing; and
 - (B) with an average monthly facility throughput of 10,000 gallons or less.
- (3) If money is available in the fund and the responsible party has paid costs of \$10,000, the executive secretary shall pay costs from the fund in an amount not to exceed:
 - (a) \$990,000 if the release was from a tank:
 - (i) located at a facility engaged in petroleum production, refining, or marketing; or
 - (ii) with an average monthly facility throughput of more than 10,000 gallons; and
 - (b) \$490,000 if the release was from a tank:
 - (i) not located at a facility engaged in petroleum production, refining, or marketing; and
 - (ii) with an average monthly facility throughput of 10,000 gallons or less.
- (4) The total costs of tank releases regarding any responsible party that may be paid in any fiscal year by fund monies are:
 - (a) \$990,000 for a responsible party of one to 99 petroleum storage tanks; or
 - (b) \$1,990,000 for a responsible party of 100 or more petroleum storage tanks.
- (5) (a) In authorizing payments for costs from the fund, the executive secretary shall apportion monies first to legal, adjusting, and actuarial expenses incurred by the state; expenses incurred in investigation, abatement action, and corrective action; and then to payment of judgments, awards, or settlements to third parties for bodily injury or property damage.
 - (b) The board shall make rules governing the apportionment of costs among third party claimants.

19-6-420. Releases -- Abatement actions -- Corrective actions.

- (1) If the executive secretary determines that a release from a petroleum storage tank has occurred, he shall:
 - (a) identify and name as many of the responsible parties as reasonably possible; and
 - (b) determine which responsible parties, if any, are covered by the fund regarding the release in question.
- (2) Regardless of whether the tank generating the release is covered by the fund, the executive secretary may:
 - (a) order the owner or operator to take abatement, investigative, or corrective action, including the submission of a corrective action plan; and
 - (b) if the owner or operator fails to take any of the abatement, investigative, or corrective action ordered by the executive secretary, the executive secretary may take any one or more of the following actions:
 - (i) subject to the conditions in this part, use monies from the fund, if the tank involved is covered by the fund, state cleanup appropriation, or the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective action;
 - (ii) commence an enforcement proceeding;
 - (iii) enter into agreements or issue orders as allowed by Section 19-6-424.5; or
 - (iv) recover costs from responsible parties equal to their proportionate share of liability as determined by Section 19-6-424.5.
- (3) (a) Subject to the limitations established in Section 19-6-419, the executive secretary shall provide monies from the fund for abatement action for a release generated by a tank covered by the fund if:
 - (i) the owner or operator takes the abatement action ordered by the executive secretary; and
 - (ii) the executive secretary approves the abatement action.
- (b) If a release presents the possibility of imminent and substantial danger to the public health or the environment, the owner or operator may take immediate abatement action and petition the executive secretary for reimbursement from the fund for the costs of the abatement action. If the owner or operator can demonstrate to the satisfaction of the executive secretary that the abatement action was reasonable and timely in light of circumstances, the executive secretary shall reimburse the petitioner for costs associated with immediate abatement action, subject to the

limitations established in Section 19-6-419.

(c) The owner or operator shall notify the executive secretary within 24 hours of the abatement action taken.

(4) (a) If the executive secretary determines corrective action is necessary, the executive secretary shall order the owner or operator to submit a corrective action plan to address the release.

(b) If the owner or operator submits a corrective action plan, the executive secretary shall review the corrective action plan and approve or disapprove the plan.

(c) In reviewing the corrective action plan, the executive secretary shall consider the following:

(i) the threat to public health;

(ii) the threat to the environment; and

(iii) the cost-effectiveness of alternative corrective actions.

(5) If the executive secretary approves the corrective action plan or develops his own corrective action plan, he shall:

(a) approve the estimated cost of implementing the corrective action plan;

(b) order the owner or operator to implement the corrective action plan;

(c) (i) if the release is covered by the fund, determine the amount of fund monies to be allocated to an owner or operator to implement a corrective action plan; and

(ii) subject to the limitations established in Section 19-6-419, provide monies from the fund to the owner or operator to implement the corrective action plan.

(6) (a) The executive secretary may not distribute any monies from the fund for corrective action until the owner or operator obtains the executive secretary's approval of the corrective action plan.

(b) An owner or operator who begins corrective action without first obtaining approval from the executive secretary and who is covered by the fund may be reimbursed for the costs of the corrective action, subject to the limitations established in Section 19-6-419, if:

(i) the owner or operator submits the corrective action plan to the executive secretary within seven days after beginning corrective action; and

(ii) the executive secretary approves the corrective action plan.

(7) If the executive secretary disapproves the plan, he shall solicit a new corrective action plan from the owner or operator.

(8) If the executive secretary disapproves the second corrective action plan, or if the owner or operator fails to submit a second plan within a reasonable time, the executive secretary may:

(a) develop his own corrective action plan; and

(b) act as authorized under Subsections (2) and (5).

(9) (a) When notified that the corrective action plan has been implemented, the executive secretary shall inspect the location of the release to determine whether or not the corrective action has been properly performed and completed.

(b) If the executive secretary determines the corrective action has not been properly performed or completed, he may issue an order requiring the owner or operator to complete the corrective action within the time specified in the order.

19-6-421. Third party payment restrictions and requirements.

(1) If there are sufficient revenues in the fund, and subject to the provisions of Sections 19-6-419, 19-6-422, and 19-6-423, the executive secretary shall authorize payment from the fund to third parties regarding a release covered by the fund as provided in Subsection (2) if:

(a) (i) he is notified that a final judgment or award has been entered against the responsible party covered by the fund that determines liability for bodily injury or property damage to third parties caused by a release from the tank; or

(ii) approved by the state risk manager, the responsible party has agreed to pay an amount in settlement of a claim arising from the release; and

(b) the responsible party has failed to satisfy the judgment or award, or pay the amount agreed to.

(2) The executive secretary shall authorize payment to the third parties of the amount of the judgment, award, or amount agreed to subject to the limitations established in Section 19-6-419.

19-6-422. Participation by state risk manager in suit, claim, or settlement.

(1) If a suit is filed or a claim is made against a responsible party who is eligible for payments from the fund for bodily injury or property damage connected with a release of petroleum from a petroleum storage tank, the state risk manager and his legal counsel may participate with the responsible party and his legal counsel in:

- (a) the defense of any suit;
- (b) determination of legal strategy and any other decisions affecting the defense of any suit; and
- (c) any settlement negotiations.

(2) The state risk manager shall approve any settlement between the responsible party and a third party before payment of fund monies is made.

19-6-423. Claim or suit against responsible parties -- Prerequisites for payment from fund to responsible parties or third parties -- Limitations of liability for third party claims.

(1) In order to be eligible for payments from the fund, if a responsible party receives actual or constructive notice of an occurrence likely to give rise to a claim, that a suit has been filed, or a claim has been made against him for bodily injury or property damage connected with a release of petroleum from a petroleum storage tank, the responsible party shall:

- (a) inform the state risk manager immediately of the occurrence, suit, or claim;
- (b) allow the state risk manager and his legal counsel to participate with the responsible party and his legal counsel in:

- (i) the defense of any suit;
- (ii) determination of legal strategy and any other decisions affecting the defense of any suit; and
- (iii) any settlement negotiations; and
- (c) conduct the defense of any suit or claim in good faith.

(2) The executive secretary may not authorize payment of fund monies for any judgment or award to third parties unless the state risk manager:

- (a) indicates that he was not prevented from participating in the defense of the suit; and
- (b) approves the settlement.

(3) In making payments to third parties from the fund pursuant to Section 19-6-421, or in funding a corrective action plan pursuant to Section 19-6-420, the executive secretary may not pay an award or judgment or fund a corrective action plan to the extent that it imposes any liability or makes any payment for:

- (a) obligations of a responsible party under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) bodily injury to an employee of the responsible party arising from and in the course of his employment or to the spouse, child, parent, brother, sister, heirs, or personal representatives of that employee as a result of that bodily injury;
- (c) bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) property damage to any property owned by, occupied by, rented to, loaned to, bailed to, or otherwise in the care, custody, or control of the owner or operator except to the extent necessary to complete a corrective action plan;
- (e) bodily injury or property damage for which the responsible party is obligated to pay damages only by reason of the assumption of liability in a contract or agreement, other than a contract or agreement entered into to meet the financial responsibility requirements of Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C., Section 6991c, et seq., or this part, or regulations or rules made under either of them;
- (f) bodily injury or property damage for which the responsible party is liable to a third party solely on account of personal injury to the spouse of that third party;
- (g) bodily injury or property damage caused by a release from a petroleum storage tank covered by the fund or the cost of a corrective action plan, where the total amount previously paid by the executive secretary to compensate third parties or for funding a corrective action plan in respect to that same accidental release from the covered tank equals \$990,000; or

(h) bodily injury or property damage caused by a release from a petroleum storage tank covered by the fund or the cost of a corrective action plan when the total amount previously paid by the executive secretary to compensate third parties or for funding corrective action plans in respect to releases from tanks of any one responsible party during any fiscal year equals \$990,000 for a responsible party regarding one to 99 petroleum storage tanks or \$1,990,000 for a responsible party regarding 100 or more petroleum storage tanks.

19-6-424. Claims not covered by fund.

- (1) The executive secretary may not authorize payments from the fund unless:
 - (a) the claim was based on a release occurring during a period for which that tank was covered by the fund;
 - (b) the claim was made:
 - (i) during a period for which that tank was covered by the fund; or
 - (ii) (A) within one year after that fund-covered tank is closed; or
 - (B) within six months after the end of the period during which the tank was covered by the fund; and
 - (c) there are sufficient revenues in the fund.
- (2) The executive secretary may not authorize payments from the fund for an underground storage tank installation company unless:
 - (a) the claim was based on a release occurring during the period prior to the issuance of a certificate of compliance;
 - (b) the claim was made within 12 months after the date the tank is issued a certificate of compliance for that tank; and
 - (c) there are sufficient revenues in the fund.
- (3) The executive secretary may require the claimant to provide additional information as necessary to demonstrate coverage by the fund at the time of submittal of the claim.
- (4) If the Legislature repeals or refuses to reauthorize the program for petroleum storage tanks established in this part, the executive secretary may authorize payments from the fund as provided in this part for claims made until the end of the time period established in Subsection (1) or (2) provided there are sufficient revenues in the fund.

19-6-424.5. Apportionment of liability -- Liability agreements -- Legal remedies -- Amounts recovered.

- (1) After providing notice and opportunity for comment to responsible parties identified and named under Section 19-6-420, the executive secretary may:
 - (a) issue written orders determining responsible parties;
 - (b) issue written orders apportioning liability among responsible parties; and
 - (c) take action, including legal action or issuing written orders, to recover costs from responsible parties, including costs of any investigation, abatement, and corrective action performed under this part.
 - (2) (a) In any apportionment of liability, whether made by the executive secretary or made in any administrative proceeding or judicial action, the following standards apply:
 - (i) liability shall be apportioned among responsible parties in proportion to their respective contributions to the release; and
 - (ii) the apportionment of liability shall be based on equitable factors, including the quantity, mobility, persistence, and toxicity of regulated substances contributed by a responsible party, and the comparative behavior of a responsible party in contributing to the release, relative to other responsible parties.
 - (b) (i) The burden of proving proportionate contribution shall be borne by each responsible party.
 - (ii) If a responsible party does not prove his proportionate contribution, the court, the board, or the executive secretary shall apportion liability to the party based on available evidence and the standards of Subsection (2)(a).
 - (c) The court, the board, or the executive secretary may not impose joint and several liability.
 - (d) Each responsible party is strictly liable for his share of costs.
- (3) The failure of the executive secretary to name all responsible parties is not a defense to an action under this section.
- (4) The executive secretary may enter into an agreement with any responsible party regarding that party's

proportionate share of liability or any action to be taken by that party.

(5) The executive secretary and a responsible party may not enter into an agreement under this part unless all responsible parties named and identified under Subsection 19-6-420(1)(a):

(a) have been notified in writing by either the executive secretary or the responsible party of the proposed agreement; and

(b) have been given an opportunity to comment on the proposed agreement prior to the parties' entering into the agreement.

(6) (a) Any party who incurs costs under this part in excess of his liability may seek contribution from any other party who is or may be liable under this part for the excess costs in the district court.

(b) In resolving claims made under Subsection (6)(a), the court shall allocate costs using the standards in Subsection (2).

(7) (a) A party who has resolved his liability under this part is not liable for claims for contribution regarding matters addressed in the agreement or order.

(b) (i) An agreement or order determining liability under this part does not discharge any of the liability of responsible parties who are not parties to the agreement or order, unless the terms of the agreement or order expressly provide otherwise.

(ii) An agreement or order determining liability made under this subsection reduces the potential liability of other responsible parties by the amount of the agreement or order.

(8) (a) If the executive secretary obtains less than complete relief from a party who has resolved his liability under this section, the executive secretary may bring an action against any party who has not resolved his liability as determined in an order.

(b) In apportioning liability, the standards of Subsection (2) apply.

(c) A party who resolved his liability for some or all of the costs under this part may seek contribution from any person who is not a party to the agreement or order.

(9) (a) An agreement or order determining liability under this part may provide that the executive secretary will pay for costs of actions that the parties have agreed to perform, but which the executive secretary has agreed to finance, under the terms of the agreement or order.

(b) If the executive secretary makes payments from the fund or state cleanup appropriation, he may recover the amount paid using the authority of Section 19-6-420 and this section or any other applicable authority.

(c) Any amounts recovered under this section shall be deposited in the Petroleum Storage Tank Cleanup Fund created under Section 19-6-405.7.

19-6-425. Violation of part -- Civil penalty -- Suit in district court.

(1) Except as provided in Section 19-6-407, any person who violates any requirement of this part or any order issued or rule made under the authority of this part is subject to a civil penalty of not more than \$10,000 per day for each day of violation.

(2) The executive secretary may enforce any requirement, rule, agreement, or order issued under this part by bringing a suit in the district court in the county where the underground storage tank or petroleum storage tank is located.

(3) The department shall deposit the penalties collected under this part in the Petroleum Storage Tank Restricted Account created under Section 19-6-405.5.

19-6-426. Limitation of liability of state -- Liability of responsible parties -- Indemnification agreement involving responsible parties.

(1) This part is not intended to create an insurance program.

(2) The fund established in this part shall only provide funds to finance costs for responsible parties who meet the requirements of this part when releases from petroleum storage tanks occur.

(3) The assets of the fund, if any, are the sole source of monies to pay claims against the fund.

(4) The state is not liable for:

- (a) any amounts payable from the fund for which the fund does not have sufficient assets;
 - (b) any expenses or debts of the fund; or
 - (c) any claim arising from the creation, management, rate-setting, or any other activity pertaining to the fund.
- (5) The responsible parties are liable for any costs associated with any release from the underground storage tank system.

(6) This part does not preclude a responsible party from enforcing or recovering under any agreement or contract for indemnification associated with a release from the tank or from pursuing any other legal remedies that may be available against any party.

(7) If any payment is made under this part, the fund shall be subrogated to all the responsible parties' rights of recovery against any person or organization and the responsible parties shall execute and deliver instruments and papers and do whatever else is necessary to secure the rights. The responsible parties shall do nothing after a release is discovered to prejudice the rights. In the event of recovery by the fund, any amount recovered shall first be used to reimburse the responsible parties for costs they are required to pay pursuant to Section 19-6-419.

(8) Parties who elect to participate in the fund do so subject to the conditions and limitations in this section and in this part.

19-6-427. Liability of any person under other laws -- Additional state and governmental immunity -- Exceptions.

(1) Except as provided in Subsection (2), nothing in this part affects or modifies in any way:

(a) the obligations or liability of any person under any other provision of this part or state or federal law, including common law, for damages, injury, or loss resulting from a release or substantial threat of a release of petroleum from an underground storage tank or a petroleum storage tank; or

(b) the liability of any person for costs incurred except as provided in this part.

(2) In addition to the governmental immunity granted in Title 63G, Chapter 7, Governmental Immunity Act of Utah, the state and its political subdivisions are not liable for actions performed under this part except as a result of intentional misconduct or gross negligence including reckless, willful, or wanton misconduct.

19-6-428. Eligibility for participation in the fund.

(1) Subject to the requirements of Section 19-6-410.5, all owners and operators of existing petroleum storage tanks that were covered by the fund on May 5, 1997, may elect to continue to participate in the program by meeting the requirements of this part, including paying the tank fees and environmental assurance fee as provided in Sections 19-6-410.5 and 19-6-411.

(2) Any new petroleum storage tanks that were installed after May 5, 1997, or tanks eligible under Section 19-6-415, may elect to participate in the program by complying with the requirements of this part.

(3) (a) All owners and operators of petroleum storage tanks who elect to not participate in the program, including by the use of an alternative financial assurance mechanism, shall, in order to subsequently participate in the program:

(i) perform a tank tightness test;

(ii) except as provided in Subsection (3)(b), perform a site check, including soil and, when applicable, groundwater samples, to demonstrate that no release of petroleum exists or that there has been adequate remediation of releases as required by board rules;

(iii) provide the required tests and samples to the executive secretary; and

(iv) comply with the requirements of this part.

(b) A site check under Subsection (3)(a)(ii) is not required if the executive secretary determines, with reasonable cause, that soil and groundwater samples are unnecessary to establish that no petroleum has been released.

(4) The executive secretary shall review the tests and samples provided under Subsection (3)(a)(iii) to determine:

(a) whether or not any release of the petroleum has occurred; or

(b) if the remediation is adequate.

19-6-429. False information and claims.

(1) Any person who presents or causes to be presented any oral or written statement, knowing the statement contains false information, in order to obtain a certificate of compliance is guilty of a class B misdemeanor.

(2) (a) Any person who presents or causes to be presented any claim for payment from the fund, knowing the claim contains materially false information or knowing the claim is not eligible for payment from the fund, is subject to the criminal penalties under Section 76-10-1801 regarding fraud.

(b) The level of criminal penalty shall be determined by the value involved, in the same manner as in Section 76-10-1801.

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the requirements of parts 257 and 258 of this chapter.

§ 279.82 Use as a dust suppressant.

(a) The use of used oil as a dust suppressant is prohibited, except when such activity takes place in one of the states listed in paragraph (c) of this section.

(b) A State may petition (e.g., as part of its authorization petition submitted to EPA under § 271.5 of this chapter or by a separate submission) EPA to allow the use of used oil (that is not mixed with hazardous waste and does not exhibit a characteristic other than ignitability) as a dust suppressant. The State must show that it has a program in place to prevent the use of used oil/hazardous waste mixtures or used oil exhibiting a characteristic other than ignitability as a dust suppressant. In addition, such programs must minimize the impacts of use as a dust suppressant on the environment.

(c) *List of States.* [Reserved]

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (UST)

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APPENDIX II TO PART 280—LIST OF AGENCIES DESIGNATED TO RECEIVE NOTIFICATIONS

APPENDIX III TO PART 280—STATEMENT FOR SHIPPING TICKETS AND INVOICES

AUTHORITY: 42 U.S.C. 6912, 6991, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, 6991g, 6991h.

SOURCE: 53 FR 37194, Sept. 23, 1988, unless otherwise noted.

Subpart A—Program Scope and Interim Prohibition

§ 280.10 Applicability.

(a) The requirements of this part apply to all owners and operators of an UST system as defined in § 280.12 except as otherwise provided in paragraphs (b), (c), and (d) of this section. Any UST system listed in paragraph (c) of this section must meet the requirements of § 280.11.

(b) The following UST systems are excluded from the requirements of this part:

(1) Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 402 or 307(b) of the Clean Water Act.

(3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(4) Any UST system whose capacity is 110 gallons or less.

(5) Any UST system that contains a *de minimis* concentration of regulated substances.

(6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) *Deferrals.* Subparts B, C, D, E, and G do not apply to any of the following types of UST systems:

(1) Wastewater treatment tank systems;

(2) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following);

(3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR part 50, appendix A;

(4) Airport hydrant fuel distribution systems; and

(5) UST systems with field-constructed tanks.

(d) *Deferrals.* Subpart D does not apply to any UST system that stores fuel solely for use by emergency power generators.

§ 280.11 Interim prohibition for deferred UST systems.

(a) No person may install an UST system listed in § 280.10(c) for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner

to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

(b) Notwithstanding paragraph (a) of this section, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

NOTE: The National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used as guidance for complying with paragraph (b) of this section.

§ 280.12 Definitions.

Aboveground release means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of an UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from an UST system.

Ancillary equipment means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from an UST.

Belowground release means any release to the subsurface of the land and to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

Beneath the surface of the ground means beneath the ground surface or otherwise covered with earthen materials.

Cathodic protection is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of ei-

ther galvanic anodes or impressed current.

Cathodic protection tester means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

CERCLA means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

Compatible means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

Connected piping means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

Consumptive use with respect to heating oil means consumed on the premises.

Corrosion expert means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

Dielectric material means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from

the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).

Electrical equipment means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

Excavation zone means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

Existing tank system means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before December 22, 1988. Installation is considered to have commenced if:

(a) The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,

(b)(1) Either a continuous on-site physical construction or installation program has begun; or,

(2) The owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for physical construction at the site or installation of the tank system to be completed within a reasonable time.

Farm tank is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

Flow-through process tank is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

Free product refers to a regulated substance that is present as a non-aqueous

phase liquid (e.g., liquid not dissolved in water.)

Gathering lines means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

Hazardous substance UST system means an underground storage tank system that contains a hazardous substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

Heating oil means petroleum that is No. 1, No. 2, No. 4—light, No. 4—heavy, No. 5—light, No. 5—heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

Hydraulic lift tank means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

Implementing agency means EPA, or, in the case of a state with a program approved under section 9004 (or pursuant to a memorandum of agreement with EPA), the designated state or local agency responsible for carrying out an approved UST program.

Liquid trap means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

Maintenance means the normal operational upkeep to prevent an underground storage tank system from releasing product.

Motor fuel means petroleum or a petroleum-based substance that is motor

gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

New tank system means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after December 22, 1988. (See also "Existing Tank System.")

Noncommercial purposes with respect to motor fuel means not for resale.

On the premises where stored with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

Operational life refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Subpart G.

Operator means any person in control of, or having responsibility for, the daily operation of the UST system.

Overfill release is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

Owner means:

(a) In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of regulated substances; and

(b) In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

Person means an individual, trust, firm, joint stock company, Federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States Government.

Petroleum UST system means an underground storage tank system that contains petroleum or a mixture of petroleum with *de minimis* quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

Pipe or Piping means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

Pipeline facilities (including gathering lines) are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

Regulated substance means:

(a) Any substance defined in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and

(b) Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

The term "regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

Release means any spilling, leaking, emitting, discharging, escaping, leaching or disposing from an UST into ground water, surface water or subsurface soils.

Release detection means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

Repair means to restore a tank or UST system component that has caused a release of product from the UST system.

Residential tank is a tank located on property used primarily for dwelling purposes.

SARA means the Superfund Amendments and Reauthorization Act of 1986.

Septic tank is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank

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are pumped out periodically and hauled to a treatment facility.

Storm-water or wastewater collection system means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

Surface impoundment is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

Tank is a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

Underground area means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

Underground release means any below-ground release.

Underground storage tank or *UST* means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any:

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) Tank used for storing heating oil for consumptive use on the premises where stored;

(c) Septic tank;

(d) Pipeline facility (including gathering lines) regulated under:

(1) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, *et seq.*), or

(2) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, *et seq.*), or

(3) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in paragraph (d)(1) or (d)(2) of this definition;

(e) Surface impoundment, pit, pond, or lagoon;

(f) Storm-water or wastewater collection system;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor. The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in paragraphs (a) through (i) of this definition.

Upgrade means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

UST system or *Tank system* means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

Wastewater treatment tank means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

Subpart B—UST Systems: Design, Construction, Installation and Notification

§ 280.20 Performance standards for new UST systems.

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

(a) *Tanks*. Each tank must be properly designed and constructed, and any

portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The tank is constructed of fiberglass-reinforced plastic; or

NOTE: The following industry codes may be used to comply with paragraph (a)(1) of this section: Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriter's Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."

(2) The tank is constructed of steel and cathodically protected in the following manner:

(i) The tank is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in § 280.31(c); and

(iv) Cathodic protection systems are operated and maintained in accordance with § 280.31 or according to guidelines established by the implementing agency; or

NOTE: The following codes and standards may be used to comply with paragraph (a)(2) of this section:

(A) Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks";

(B) Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks";

(C) Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-G03.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or

(D) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories

Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."

(3) The tank is constructed of a steel-fiberglass-reinforced-plastic composite; or

NOTE: The following industry codes may be used to comply with paragraph (a)(3) of this section: Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."

(4) The tank is constructed of metal without additional corrosion protection measures provided that:

(i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraphs (a)(4)(i) for the remaining life of the tank; or

(5) The tank construction and corrosion protection are determined by the implementing agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than paragraphs (a) (1) through (4) of this section.

(b) *Piping.* The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The piping is constructed of fiberglass-reinforced plastic; or

NOTE: The following codes and standards may be used to comply with paragraph (b)(1) of this section:

(A) Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe";

(B) Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas";

(C) Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and

(D) Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

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(2) The piping is constructed of steel and cathodically protected in the following manner:

(i) The piping is coated with a suitable dielectric material;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in § 280.31(c); and

(iv) Cathodic protection systems are operated and maintained in accordance with § 280.31 or guidelines established by the implementing agency; or

NOTE: The following codes and standards may be used to comply with paragraph (b)(2) of this section:

(A) National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code";

(B) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems";

(C) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and

(D) National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."

(3) The piping is constructed of metal without additional corrosion protection measures provided that:

(i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and

(ii) Owners and operators maintain records that demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section for the remaining life of the piping; or

NOTE: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; and National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems," may be used to comply with paragraph (b)(3) of this section.

(4) The piping construction and corrosion protection are determined by the implementing agency to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in

paragraphs (b) (1) through (3) of this section.

(c) *Spill and overfill prevention equipment.* (1) Except as provided in paragraph (c)(2) of this section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

(i) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

(ii) Overfill prevention equipment that will:

(A) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

(B) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

(C) Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

(2) Owners and operators are not required to use the spill and overfill prevention equipment specified in paragraph (c)(1) of this section if:

(i) Alternative equipment is used that is determined by the implementing agency to be no less protective of human health and the environment than the equipment specified in paragraph (c)(1) (i) or (ii) of this section; or

(ii) The UST system is filled by transfers of no more than 25 gallons at one time.

(d) *Installation.* All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

NOTE: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of paragraph (d) of this section:

(i) American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System"; or

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(ii) Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or

(iii) American National Standards Institute Standard B31.3, "Petroleum Refinery Piping," and American National Standards Institute Standard B31.4 "Liquid Petroleum Transportation Piping System."

(e) *Certification of installation.* All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with paragraph (d) of this section by providing a certification of compliance on the UST notification form in accordance with § 280.22.

(1) The installer has been certified by the tank and piping manufacturers; or

(2) The installer has been certified or licensed by the implementing agency; or

(3) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or

(4) The installation has been inspected and approved by the implementing agency; or

(5) All work listed in the manufacturer's installation checklists has been completed; or

(6) The owner and operator have complied with another method for ensuring compliance with paragraph (d) of this section that is determined by the implementing agency to be no less protective of human health and the environment.

[53 FR 37194, Sept. 23, 1988, as amended at 56 FR 38344, Aug. 13, 1991]

§ 280.21 Upgrading of existing UST systems.

(a) *Alternatives allowed.* Not later than December 22, 1998, all existing UST systems must comply with one of the following requirements:

(1) New UST system performance standards under § 280.20;

(2) The upgrading requirements in paragraphs (b) through (d) of this section; or

(3) Closure requirements under subpart G of this part, including applicable requirements for corrective action under subpart F.

(b) *Tank upgrading requirements.* Steel tanks must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

(1) *Interior lining.* A tank may be upgraded by internal lining if:

(i) The lining is installed in accordance with the requirements of § 280.33, and

(ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(2) *Cathodic protection.* A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of § 280.20(a)(2) (ii), (iii), and (iv) and the integrity of the tank is ensured using one of the following methods:

(i) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

(ii) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with § 280.43 (d) through (h); or

(iii) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of § 280.43(c). The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three (3) and six (6) months following the first operation of the cathodic protection system; or

(iv) The tank is assessed for corrosion holes by a method that is determined by the implementing agency to prevent releases in a manner that is no less protective of human health and the environment than paragraphs (b)(2) (i) through (iii) of this section.

(3) *Internal lining combined with cathodic protection.* A tank may be upgraded by both internal lining and cathodic protection if:

(i) The lining is installed in accordance with the requirements of § 280.33; and

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(ii) The cathodic protection system meets the requirements of § 280.20(a)(2) (ii), (iii), and (iv).

NOTE: The following codes and standards may be used to comply with this section:

(A) American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";

(B) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection";

(C) National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"; and

(D) American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."

(c) *Piping upgrading requirements.* Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of § 280.20(b)(2) (ii), (iii), and (iv).

NOTE: The codes and standards listed in the note following § 280.20(b)(2) may be used to comply with this requirement.

(d) *Spill and overfill prevention equipment.* To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in § 280.20(c).

§ 280.22 Notification requirements.

(a) Any owner who brings an underground storage tank system into use after May 8, 1986, must within 30 days of bringing such tank into use, submit, in the form prescribed in appendix I of this part, a notice of existence of such tank system to the state or local agency or department designated in appendix II of this part to receive such notice.

NOTE: Owners and operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the designated state or local agency in accordance with the Hazardous and Solid

Waste Amendments of 1984, Pub. L. 98-616, on a form published by EPA on November 8, 1985 (50 FR 46602) unless notice was given pursuant to section 103(c) of CERCLA. Owners and operators who have not complied with the notification requirements may use portions I through VI of the notification form contained in appendix I of this part.

(b) In states where state law, regulations, or procedures require owners to use forms that differ from those set forth in appendix I of this part to fulfill the requirements of this section, the state forms may be submitted in lieu of the forms set forth in Appendix I of this part. If a state requires that its form be used in lieu of the form presented in this regulation, such form must meet the requirements of section 9002.

(c) Owners required to submit notices under paragraph (a) of this section must provide notices to the appropriate agencies or departments identified in appendix II of this part for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operation must file a separate notification form for each separate place of operation.

(d) Notices required to be submitted under paragraph (a) of this section must provide all of the information in sections I through VI of the prescribed form (or appropriate state form) for each tank for which notice must be given. Notices for tanks installed after December 22, 1988 must also provide all of the information in section VII of the prescribed form (or appropriate state form) for each tank for which notice must be given.

(e) All owners and operators of new UST systems must certify in the notification form compliance with the following requirements:

(1) Installation of tanks and piping under § 280.20(e);

(2) Cathodic protection of steel tanks and piping under § 280.20 (a) and (b);

(3) Financial responsibility under subpart H of this part; and

(4) Release detection under §§ 280.41 and 280.42.

(f) All owners and operators of new UST systems must ensure that the installer certifies in the notification form that the methods used to install

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the tanks and piping complies with the requirements in § 280.20(d).

(g) Beginning October 24, 1988, any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of such tank of the owner's notification obligations under paragraph (a) of this section. The form provided in appendix III of this part may be used to comply with this requirement.

Subpart C—General Operating Requirements

§ 280.30 Spill and overfill control.

(a) Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

NOTE: The transfer procedures described in National Fire Protection Association Publication 385 may be used to comply with paragraph (a) of this section. Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(b) The owner and operator must report, investigate, and clean up any spills and overfills in accordance with § 280.53.

§ 280.31 Operation and maintenance of corrosion protection.

All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

(a) All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

(b) All UST systems equipped with cathodic protection systems must be

inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) *Frequency.* All cathodic protection systems must be tested within 6 months of installation and at least every 3 years thereafter or according to another reasonable time frame established by the implementing agency; and

(2) *Inspection criteria.* The criteria that are used to determine that cathodic protection is adequate as required by this section must be in accordance with a code of practice developed by a nationally recognized association.

NOTE: National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used to comply with paragraph (b)(2) of this section.

(c) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.

(d) For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with § 280.34) to demonstrate compliance with the performance standards in this section. These records must provide the following:

(1) The results of the last three inspections required in paragraph (c) of this section; and

(2) The results of testing from the last two inspections required in paragraph (b) of this section.

§ 280.32 Compatibility.

Owners and operators must use an UST system made of or lined with materials that are compatible with the substance stored in the UST system.

NOTE: Owners and operators storing alcohol blends may use the following codes to comply with the requirements of this section:

(a) American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and

(b) American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."

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§ 280.33 Repairs allowed.

Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

(a) Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

NOTE: The following codes and standards may be used to comply with paragraph (a) of this section: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines"; American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."

(b) Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

(c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.

(d) Repaired tanks and piping must be tightness tested in accordance with § 280.43(c) and § 280.44(b) within 30 days following the date of the completion of the repair except as provided in paragraphs (d) (1) through (3), of this section:

(1) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

(2) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in § 280.43 (d) through (h); or

(3) Another test method is used that is determined by the implementing

agency to be no less protective of human health and the environment than those listed above.

(e) Within 6 months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with § 280.31 (b) and (c) to ensure that it is operating properly.

(f) UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this section.

§ 280.34 Reporting and recordkeeping.

Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the implementing agency, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended.

(a) *Reporting.* Owners and operators must submit the following information to the implementing agency:

(1) Notification for all UST systems (§ 280.22), which includes certification of installation for new UST systems (§ 280.20(e)).

(2) Reports of all releases including suspected releases (§ 280.50), spills and overfills (§ 280.53), and confirmed releases (§ 280.61);

(3) Corrective actions planned or taken including initial abatement measures (§ 280.62), initial site characterization (§ 280.63), free product removal (§ 280.64), investigation of soil and ground-water cleanup (§ 280.65), and corrective action plan (§ 280.66); and

(4) A notification before permanent closure or change-in-service (§ 280.71).

(b) *Recordkeeping.* Owners and operators must maintain the following information:

(1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (§ 280.20(a)(4); § 280.20(b)(3)).

(2) Documentation of operation of corrosion protection equipment (§ 280.31);

(3) Documentation of UST system repairs (§ 280.33(f));

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(4) Recent compliance with release detection requirements (§ 280.45); and

(5) Results of the site investigation conducted at permanent closure (§ 280.74).

(c) *Availability and Maintenance of Records.* Owners and operators must keep the records required either:

(1) At the UST site and immediately available for inspection by the implementing agency; or

(2) At a readily available alternative site and be provided for inspection to the implementing agency upon request.

(3) In the case of permanent closure records required under § 280.74, owners and operators are also provided with the additional alternative of mailing closure records to the implementing agency if they cannot be kept at the site or an alternative site as indicated above.

Subpart D—Release Detection

§ 280.40 General requirements for all UST systems.

(a) Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(3) Meets the performance requirements in § 280.43 or 280.44, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after the date shown in the following table corresponding with the specified method except for methods permanently installed prior to that date, must be capable of detecting the leak rate or quantity specified for that method in the corresponding section of the rule (also shown in the table) with a probability of detection (Pd) of 0.95 and a probability of false alarm (Pfa) of 0.05.

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Method	Section	Date after which Pd/Pfa must be demonstrated
Manual Tank Gauging.	280.43(b)	December 22, 1990.
Tank Tightness Testing.	280.43(c)	December 22, 1990.
Automatic Tank Gauging.	280.43(d)	December 22, 1990.
Automatic Line Leak Detectors.	280.44(a)	September 22, 1991.
Line Tightness Testing.	280.44(b)	December 22, 1990.

(b) When a release detection method operated in accordance with the performance standards in § 280.43 and § 280.44 indicates a release may have occurred, owners and operators must notify the implementing agency in accordance with subpart E.

(c) Owners and operators of all UST systems must comply with the release detection requirements of this subpart by December 22 of the year listed in the following table:

SCHEDULE FOR PHASE-IN OF RELEASE DETECTION

Year system was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or date unknown.	RD	P			
1965–69		P/RD			
1970–74		P	RD		
1975–79		P		RD	
1980–88		P			RD

New tanks (after December 22) immediately upon installation.

P=Must begin release detection for all pressurized piping as defined in § 280.41(b)(1).

RD=Must begin release detection for tanks and suction piping in accordance with § 280.41(a), § 280.41(b)(2), and § 280.42.

(d) Any existing UST system that cannot apply a method of release detection that complies with the requirements of this subpart must complete the closure procedures in subpart G by the date on which release detection is required for that UST system under paragraph (c) of this section.

[53 FR 37194, Sept. 23, 1988, as amended at 55 FR 17753, Apr. 27, 1990; 55 FR 23738, June 12, 1990; 56 FR 26, Jan. 2, 1991]

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§ 280.41 Requirements for petroleum UST systems.

Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

(a) *Tanks.* Tanks must be monitored at least every 30 days for releases using one of the methods listed in § 280.43 (d) through (h) except that:

(1) UST systems that meet the performance standards in § 280.20 or § 280.21, and the monthly inventory control requirements in § 280.43 (a) or (b), may use tank tightness testing (conducted in accordance with § 280.43(c)) at least every 5 years until December 22, 1998, or until 10 years after the tank is installed or upgraded under § 280.21(b), whichever is later;

(2) UST systems that do not meet the performance standards in § 280.20 or § 280.21 may use monthly inventory controls (conducted in accordance with § 280.43(a) or (b)) and annual tank tightness testing (conducted in accordance with § 280.43(c)) until December 22, 1998 when the tank must be upgraded under § 280.21 or permanently closed under § 280.71; and

(3) Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with § 280.43(b)).

(b) *Piping.* Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(1) *Pressurized piping.* Underground piping that conveys regulated substances under pressure must:

(i) Be equipped with an automatic line leak detector conducted in accordance with § 280.44(a); and

(ii) Have an annual line tightness test conducted in accordance with § 280.44(b) or have monthly monitoring conducted in accordance with § 280.44(c).

(2) *Suction piping.* Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years and in accordance with § 280.44(b), or use a monthly monitoring method conduct in accordance with § 280.44(c). No release detection is required for suction piping that is de-

signed and constructed to meet the following standards:

(i) The below-grade piping operates at less than atmospheric pressure;

(ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(iii) Only one check valve is included in each suction line;

(iv) The check valve is located directly below and as close as practical to the suction pump; and

(v) A method is provided that allows compliance with paragraphs (b)(2) (i)-(iv) of this section to be readily determined.

§ 280.42 Requirements for hazardous substance UST systems.

Owners and operators of hazardous substance UST systems must provide release detection that meets the following requirements:

(a) Release detection at existing UST systems must meet the requirements for petroleum UST systems in § 280.41. By December 22, 1998, all existing hazardous substance UST systems must meet the release detection requirements for new systems in paragraph (b) of this section.

(b) Release detection at new hazardous substance UST systems must meet the following requirements:

(1) Secondary containment systems must be designed, constructed and installed to:

(i) Contain regulated substances released from the tank system until they are detected and removed;

(ii) Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

(iii) Be checked for evidence of a release at least every 30 days.

NOTE. The provisions of 40 CFR 265.193, Containment and Detection of Releases, may be used to comply with these requirements.

(2) Double-walled tanks must be designed, constructed, and installed to:

(i) Contain a release from any portion of the inner tank within the outer wall; and

(ii) Detect the failure of the inner wall.

(3) External liners (including vaults) must be designed, constructed, and installed to:

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(i) Contain 100 percent of the capacity of the largest tank within its boundary;

(ii) Prevent the interference of precipitation or ground-water intrusion with the ability to contain or detect a release of regulated substances; and

(iii) Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

(4) Underground piping must be equipped with secondary containment that satisfies the requirements of paragraph (b)(1) of this section (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with § 280.44(a).

(5) Other methods of release detection may be used if owners and operators:

(i) Demonstrate to the implementing agency that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in §§ 280.43(b) through (h) can detect a release of petroleum;

(ii) Provide information to the implementing agency on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and,

(iii) Obtain approval from the implementing agency to use the alternate release detection method before the installation and operation of the new UST system.

§ 280.43 Methods of release detection for tanks.

Each method of release detection for tanks used to meet the requirements of § 280.41 must be conducted in accordance with the following:

(a) *Inventory control.* Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(1) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remain-

ing in the tank are recorded each operating day;

(2) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(3) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(4) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;

(5) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and

(6) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.

NOTE: Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of this paragraph.

(b) *Manual tank gauging.* Manual tank gauging must meet the following requirements:

(1) Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

(2) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(3) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth of an inch;

(4) A leak is suspected and subject to the requirements of subpart E if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal tank capacity	Weekly standard (one test)	Monthly standard (average of four tests)
550 gallons or less.	10 gallons	5 gallons.
551-1,000 gallons.	13 gallons	7 gallons.
1,001-2,000 gallons.	26 gallons	13 gallons.

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(5) Only tanks of 550 gallons or less nominal capacity may use this as the sole method of release detection. Tanks of 551 to 2,000 gallons may use the method in place of manual inventory control in § 280.43(a). Tanks of greater than 2,000 gallons nominal capacity may not use this method to meet the requirements of this subpart.

(c) *Tank tightness testing.* Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

(d) *Automatic tank gauging.* Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(1) The automatic product level monitor test can detect a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains product; and

(2) Inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of § 280.43(a).

(e) *Vapor monitoring.* Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(1) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(2) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(3) The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(4) The level of background contamination in the excavation zone will not

interfere with the method used to detect releases from the tank;

(5) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(6) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in paragraphs (e) (1) through (4) of this section and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and

(7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(f) *Ground-water monitoring.* Testing or monitoring for liquids on the ground water must meet the following requirements:

(1) The regulated substance stored is immiscible in water and has a specific gravity of less than one;

(2) Ground water is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

(3) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low ground-water conditions;

(4) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(5) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(6) The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;

(7) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with

the requirements in paragraphs (f) (1) through (5) of this section and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and

(8) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(g) *Interstitial monitoring.* Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(1) For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains product;

NOTE: The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;

(i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

(ii) The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(iii) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

(iv) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

(v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,

(vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(3) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(h) *Other methods.* Any other type of release detection method, or combination of methods, can be used if:

(1) It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(2) The implementing agency may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (c) through (h) of this section. In comparing methods, the implementing agency shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the implementing agency on its use to ensure the protection of human health and the environment.

§ 280.44 Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of § 280.41 must be conducted in accordance with the following:

(a) *Automatic line leak detectors.* Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.

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(b) *Line tightness testing.* A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

(c) *Applicable tank methods.* Any of the methods in § 280.43 (e) through (h) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

§ 280.45 Release detection record-keeping.

All UST system owners and operators must maintain records in accordance with § 280.34 demonstrating compliance with all applicable requirements of this subpart. These records must include the following:

(a) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for 5 years, or for another reasonable period of time determined by the implementing agency, from the date of installation;

(b) The results of any sampling, testing, or monitoring must be maintained for at least 1 year, or for another reasonable period of time determined by the implementing agency, except that the results of tank tightness testing conducted in accordance with § 280.43(c) must be retained until the next test is conducted; and

(c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed, or for another reasonable time period determined by the implementing agency. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for 5 years from the date of installation.

Subpart E—Release Reporting, Investigation, and Confirmation

§ 280.50 Reporting of suspected releases.

Owners and operators of UST systems must report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency, and follow the procedures in § 280.52 for any of the following conditions:

(a) The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer, and utility lines, and nearby surface water).

(b) Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and,

(c) Monitoring results from a release detection method required under § 280.41 and § 280.42 that indicate a release may have occurred unless:

(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(2) In the case of inventory control, a second month of data does not confirm the initial result.

§ 280.51 Investigation due to off-site impacts.

When required by the implementing agency, owners and operators of UST systems must follow the procedures in § 280.52 to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the implementing agency or brought to its attention by another party.

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§ 280.52 Release investigation and confirmation steps.

Unless corrective action is initiated in accordance with subpart F, owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under § 280.50 within 7 days, or another reasonable time period specified by the implementing agency, using either the following steps or another procedure approved by the implementing agency:

(a) *System test.* Owners and operators must conduct tests (according to the requirements for tightness testing in § 280.43(c) and § 280.44(b)) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping, or both.

(1) Owners and operators must repair, replace or upgrade the UST system, and begin corrective action in accordance with subpart F if the test results for the system, tank, or delivery piping indicate that a leak exists.

(2) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.

(3) Owners and operators must conduct a site check as described in paragraph (b) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(b) *Site check.* Owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.

(1) If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and operators must begin corrective action in accordance with subpart F;

(2) If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

§ 280.53 Reporting and cleanup of spills and overfills.

(a) Owners and operators of UST systems must contain and immediately clean up a spill or overfill and report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency, and begin corrective action in accordance with subpart F in the following cases:

(1) Spill or overfill of petroleum that results in a release to the environment that exceeds 25 gallons or another reasonable amount specified by the implementing agency, or that causes a sheen on nearby surface water; and

(2) Spill or overfill of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR part 302).

(b) Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than 25 gallons or another reasonable amount specified by the implementing agency, and a spill or overfill of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, or another reasonable time period established by the implementing agency, owners and operators must immediately notify the implementing agency.

NOTE: Pursuant to §§ 302.6 and 355.40, a release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center under sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986.

Subpart F—Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances**§ 280.60 General.**

Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this subpart except for USTs excluded under § 280.10(b) and UST systems subject to RCRA Subtitle C corrective action requirements under section 3004(u) of the Resource Conservation and Recovery Act, as amended.

§ 280.61 Initial response.

Upon confirmation of a release in accordance with § 280.52 or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of a release or within another reasonable period of time determined by the implementing agency:

- (a) Report the release to the implementing agency (e.g., by telephone or electronic mail);
- (b) Take immediate action to prevent any further release of the regulated substance into the environment; and
- (c) Identify and mitigate fire, explosion, and vapor hazards.

§ 280.62 Initial abatement measures and site check.

(a) Unless directed to do otherwise by the implementing agency, owners and operators must perform the following abatement measures:

- (1) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;
- (2) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and ground water;
- (3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into sub-

surface structures (such as sewers or basements);

(4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable State and local requirements;

(5) Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by § 280.52(b) or the closure site assessment of § 280.72(a). In selecting sample types, sample locations, and measurement methods, the owner and operator must consider the nature of the stored substance, the type of backfill, depth to ground water and other factors as appropriate for identifying the presence and source of the release; and

(6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with § 280.64.

(b) Within 20 days after release confirmation, or within another reasonable period of time determined by the implementing agency, owners and operators must submit a report to the implementing agency summarizing the initial abatement steps taken under paragraph (a) of this section and any resulting information or data.

§ 280.63 Initial site characterization.

(a) Unless directed to do otherwise by the implementing agency, owners and operators must assemble information about the site and the nature of the release, including information gained while confirming the release or completing the initial abatement measures in §§ 280.60 and 280.61. This information must include, but is not necessarily limited to the following:

- (1) Data on the nature and estimated quantity of release;
- (2) Data from available sources and/or site investigations concerning the

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following factors: surrounding populations, water quality, use and approximate locations of wells potentially affected by the release, subsurface soil conditions, locations of subsurface sewers, climatological conditions, and land use;

(3) Results of the site check required under § 280.62(a)(5); and

(4) Results of the free product investigations required under § 280.62(a)(6), to be used by owners and operators to determine whether free product must be recovered under § 280.64.

(b) Within 45 days of release confirmation or another reasonable period of time determined by the implementing agency, owners and operators must submit the information collected in compliance with paragraph (a) of this section to the implementing agency in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the implementing agency.

§ 280.64 Free product removal.

At sites where investigations under § 280.62(a)(6) indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the implementing agency while continuing, as necessary, any actions initiated under §§ 280.61 through 280.63, or preparing for actions required under §§ 280.65 through 280.66. In meeting the requirements of this section, owners and operators must:

(a) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by-products in compliance with applicable local, State and Federal regulations;

(b) Use abatement of free product migration as a minimum objective for the design of the free product removal system;

(c) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

(d) Unless directed to do otherwise by the implementing agency, prepare and

submit to the implementing agency, within 45 days after confirming a release, a free product removal report that provides at least the following information:

(1) The name of the person(s) responsible for implementing the free product removal measures;

(2) The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;

(3) The type of free product recovery system used;

(4) Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;

(5) The type of treatment applied to, and the effluent quality expected from, any discharge;

(6) The steps that have been or are being taken to obtain necessary permits for any discharge; and

(7) The disposition of the recovered free product.

§ 280.65 Investigations for soil and ground-water cleanup.

(a) In order to determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the ground water, owners and operators must conduct investigations of the release, the release site, and the surrounding area possibly affected by the release if any of the following conditions exist:

(1) There is evidence that ground-water wells have been affected by the release (e.g., as found during release confirmation or previous corrective action measures);

(2) Free product is found to need recovery in compliance with § 280.64;

(3) There is evidence that contaminated soils may be in contact with ground water (e.g., as found during conduct of the initial response measures or investigations required under §§ 280.60 through 280.64); and

(4) The implementing agency requests an investigation, based on the potential effects of contaminated soil or ground water on nearby surface water and ground-water resources.

(b) Owners and operators must submit the information collected under

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paragraph (a) of this section as soon as practicable or in accordance with a schedule established by the implementing agency.

§ 280.66 Corrective action plan.

(a) At any point after reviewing the information submitted in compliance with §§ 280.61 through 280.63, the implementing agency may require owners and operators to submit additional information or to develop and submit a corrective action plan for responding to contaminated soils and ground water. If a plan is required, owners and operators must submit the plan according to a schedule and format established by the implementing agency. Alternatively, owners and operators may, after fulfilling the requirements of §§ 280.61 through 280.63, choose to submit a corrective action plan for responding to contaminated soil and ground water. In either case, owners and operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the implementing agency, and must modify their plan as necessary to meet this standard.

(b) The implementing agency will approve the corrective action plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the implementing agency should consider the following factors as appropriate:

(1) The physical and chemical characteristics of the regulated substance, including its toxicity, persistence, and potential for migration;

(2) The hydrogeologic characteristics of the facility and the surrounding area;

(3) The proximity, quality, and current and future uses of nearby surface water and ground water;

(4) The potential effects of residual contamination on nearby surface water and ground water;

(5) An exposure assessment; and

(6) Any information assembled in compliance with this subpart.

(c) Upon approval of the corrective action plan or as directed by the implementing agency, owners and operators must implement the plan, including

modifications to the plan made by the implementing agency. They must monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the implementing agency.

(d) Owners and operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and ground water before the corrective action plan is approved provided that they:

(1) Notify the implementing agency of their intention to begin cleanup;

(2) Comply with any conditions imposed by the implementing agency, including halting cleanup or mitigating adverse consequences from cleanup activities; and

(3) Incorporate these self-initiated cleanup measures in the corrective action plan that is submitted to the implementing agency for approval.

§ 280.67 Public participation.

(a) For each confirmed release that requires a corrective action plan, the implementing agency must provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.

(b) The implementing agency must ensure that site release information and decisions concerning the corrective action plan are made available to the public for inspection upon request.

(c) Before approving a corrective action plan, the implementing agency may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.

(d) The implementing agency must give public notice that complies with paragraph (a) of this section if implementation of an approved corrective action plan does not achieve the established cleanup levels in the plan and

termination of that plan is under consideration by the implementing agency.

Subpart G—Out-of-Service UST Systems and Closure

§ 280.70 Temporary closure.

(a) When an UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with § 280.31, and any release detection in accordance with subpart D. Subparts E and F must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

(b) When an UST system is temporarily closed for 3 months or more, owners and operators must also comply with the following requirements:

(1) Leave vent lines open and functioning; and

(2) Cap and secure all other lines, pumps, manways, and ancillary equipment.

(c) When an UST system is temporarily closed for more than 12 months, owners and operators must permanently close the UST system if it does not meet either performance standards in § 280.20 for new UST systems or the upgrading requirements in § 280.21, *except that* the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with §§ 280.71-280.74, *unless* the implementing agency provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with § 280.72 before such an extension can be applied for.

§ 280.71 Permanent closure and changes-in-service.

(a) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (b) and (c)

of this section, or within another reasonable time period determined by the implementing agency, owners and operators must notify the implementing agency of their intent to permanently close or make the change-in-service, *unless* such action is in response to corrective action. The required assessment of the excavation zone under § 280.72 must be performed after notifying the implementing agency but before completion of the permanent closure or a change-in-service.

(b) To permanently close a tank, owners and operators must empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material.

(c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with § 280.72.

NOTE: The following cleaning and closure procedures may be used to comply with this section:

(A) American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";

(B) American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

(C) American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this section; and

(D) The National Institute for Occupational Safety and Health "Criteria for a Recommended Standard * * * Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

§ 280.72 Assessing the site at closure or change-in-service.

(a) Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and operators must

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consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release. The requirements of this section are satisfied if one of the external release detection methods allowed in § 280.43 (e) and (f) is operating in accordance with the requirements in § 280.43 at the time of closure, and indicates no release has occurred.

(b) If contaminated soils, contaminated ground water, or free product as a liquid or vapor is discovered under paragraph (a) of this section, or by any other manner, owners and operators must begin corrective action in accordance with subpart F.

§ 280.73 Applicability to previously closed UST systems.

When directed by the implementing agency, the owner and operator of an UST system permanently closed before December 22, 1988 must assess the excavation zone and close the UST system in accordance with this subpart if releases from the UST may, in the judgment of the implementing agency, pose a current or potential threat to human health and the environment.

§ 280.74 Closure records.

Owners and operators must maintain records in accordance with § 280.34 that are capable of demonstrating compliance with closure requirements under this subpart. The results of the excavation zone assessment required in § 280.72 must be maintained for at least 3 years after completion of permanent closure or change-in-service in one of the following ways:

- (a) By the owners and operators who took the UST system out of service;
- (b) By the current owners and operators of the UST system site; or
- (c) By mailing these records to the implementing agency if they cannot be maintained at the closed facility.

Subpart H—Financial Responsibility

SOURCE: 53 FR 43370, Oct. 26, 1988, unless otherwise noted.

§ 280.90 Applicability.

(a) This subpart applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this section.

(b) Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in § 280.91.

(c) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this subpart.

(d) The requirements of this subpart do not apply to owners and operators of any UST system described in § 280.10 (b) or (c).

(e) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in § 280.91.

§ 280.91 Compliance dates.

Owners of petroleum underground storage tanks are required to comply with the requirements of this subpart by the following dates:

(a) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of \$20 million or more to the U.S. Securities and Exchange Commission (SEC), Dun and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration; January 24, 1989, except that compliance with § 280.94(b) is required by: July 24, 1989.

(b) All petroleum marketing firms owning 100-999 USTs; October 26, 1989.

(c) All petroleum marketing firms owning 13-99 USTs at more than one facility; April 26, 1991.

(d) All petroleum UST owners not described in paragraphs (a), (b), or (c) of this section, excluding local government entities; December 31, 1993.

(e) All local government entities (including Indian tribes) not included in